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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Second periodic reports of States parties due in 1998

Addendum

GUATEMALA */

[6 October 1999]

*/ This report is issued unedited, in compliance with the wish expressed by the Human Rights Committee at its sixty-sixth session in July 1999.

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TABLE OF CONTENTS

		Paragraphs	Page
INTRODUCTION			3
I.	GENERAL FRAMEWORK OF CIVIL AND POLITICAL RIGHTS IN GUATEMALA	1 - 6	3
II.	DEVELOPMENT OF CIVIL AND POLITICAL RIGHTS FROM THE VIEWPOINT OF THE UNITED NATIONS VERIFICATION MISSION IN GUATEMALA (MINUGUA)	7 - 24	4
III.	INFORMATION ON MATTERS ADDRESSED BY THE HUMAN RIGHTS COMMITTEE DURING ITS CONSIDERATION OF THE INITIAL REPORT OF GUATEMALA ON 3 APRIL 1996	25 - 95	6
IV.	MEASURES TAKEN TO GIVE EFFECT TO THE COVENANT	96 - 454	19
	Article 2	96 - 107	19
	Article 3	108 - 134	22
	Article 4	135 - 146	27
	Article 5	147 - 149	29
	Article 6	150 - 184	29
	Article 7	185 - 216	37
	Article 8	217 - 226	42
	Article 9	227 - 235	44
	Article 10	236 - 256	49
	Article 11	257	53
	Article 12	258 - 274	53
	Article 13	275 - 283	55
	Article 14	284 - 300	57
	Article 15	301 - 303	60
	Article 16	304 - 305	61
	Article 17	306 - 316	61
	Article 18	317 - 323	63
	Article 19	324 - 336	64
	Article 20	337 - 345	65
	Article 21	346 - 350	66
	Article 22	351 - 372	67
	Article 23	373 - 383	69
	Article 24	384 - 394	71
	Article 25	395 - 428	73
	Articles 26 and 27	429 - 454	79

INTRODUCTION

The State of Guatemala submits to the Human Rights Committee the second periodic report on its compliance with the International Covenant on Civil and Political Rights. This document contains information on the measures taken between 1995 and 1999. The information is distributed as follows: General framework of civil and political rights in Guatemala; Information on matters addressed by the Human Rights Committee during its consideration of Guatemala's initial report; Measures taken to give effect to the Covenant (by article); and finally an additional document comprising annexes giving details of recent legislation.

I. GENERAL FRAMEWORK OF CIVIL AND POLITICAL RIGHTS IN GUATEMALA

1. The State of Guatemala has made substantial progress in applying the International Covenant on Civil and Political Rights, notably through the ending of armed internal conflict following the signing of the Agreement on Firm and Lasting Peace on 29 December 1996, and the transformation of governmental institutions such as the National Police Force, the Army and the Public Prosecutor's Department, and the legal system.

2. The strengthening measures that have been taken form part of a peace agenda being implemented in parallel with the Government's own programme with a view to ensuring appropriate compliance with the Government's commitments under the Peace Agreements and other State undertakings in the sphere of human rights.

3. The sixth report of the United Nations Verification Mission in Guatemala (MINUGUA) covering the period 1 July - 31 December 1996 states (para. 6): " The period under review was notable for the progress made in the negotiations, culminating in the signing of the Agreement on Firm and Lasting Peace and establishing a more favourable climate for the advancement of human rights in Guatemala. At the same time, the Government took significant steps to purge and professionalize the security forces and to demobilize the structures supporting counter-insurgency."

4. However, with regard to the protection of the rights contained in the International Covenant on Civil and Political Rights, it is important to note that full observance is still prevented in certain situations.

5. The changes made to governmental structure, particularly through the creation of a new National Civil Police, the reduction and professionalization of the Army and redefinition of its peacetime functions in the context of a democratic society, and the logistical and professional strengthening of the Public Prosecutor's Office and the legal system, are all contributing to a genuine recovery of these institutions.

6. Moreover, it should be emphasized that the signing of peace has offered all sectors of Guatemalan society increased scope for participation, particularly civil society and the indigenous peoples, which had been excluded from political and social life for decades.

II. DEVELOPMENT OF CIVIL AND POLITICAL RIGHTS FROM THE VIEWPOINT OF THE UNITED NATIONS VERIFICATION MISSION IN GUATEMALA (MINUGUA)

First report: 24 November 1994 - 20 February 1995 (A/49/856 and Corr.1)

7. During this period 100 complaints of violation of the right to life were admitted in relation to deaths arising from violation of legal guarantees or extrajudicial executions (22), attempted extrajudicial executions (10) and death threats (68). Out of all the complaints admitted, 35 per cent concerned alleged violations of the right to life.

Second report: 21 February - 21 May 1995 (A/49/929)

8. In this period 225 fresh complaints of violation of the right to life were admitted in relation to deaths arising from violations of legal guarantees and extrajudicial executions (54), attempted extrajudicial executions (25) and death threats (146). Out of all the complaints admitted, 40 per cent concerned alleged violations of the right to life.

Third report: 21 May - 21 August 1995 (A/50/482)

During this period 156 complaints concerning violation of the right to life were admitted in relation to deaths in violation of legal guarantees and extrajudicial executions (49), attempted extrajudicial executions (18) and death threats (89). Out of all the complaints admitted, 36.8 per cent concerned violations of the right to life.

Fourth report: 21 August - 31 December 1995 (A/50/878)

10. During this period 107 complaints of violations of the right to life were admitted, equivalent to 29 per cent of the total. They concerned deaths in violation of legal guarantees and extrajudicial executions (30), attempted extrajudicial executions (14) and death threats (63).

Fifth report: 1 January - 30 June 1996 (A/50/1006)

11. Beginning with this report, MINUGUA changed its method of recording and categorizing its verification data. The new method prevents comparisons with the earlier periods, as the statistical bases are different.

12. The right to life accounted for 9 per cent (4, 495) of all alleged violations for this period.

13. In the concluding section of this report, the Mission noted that the right to life continued to be seriously undermined. The enjoyment of this right was more difficult because agents of the State and persons or groups linked to them were known to be perpetrators of civilian homicides and the institutions involved did not carry out proper investigations.

Sixth report: 1 July - 31 December 1996 (A/51/790)

14. "During the period under review, the number of complaints admitted and violations verified in respect of all rights declined by comparison with the previous period. Moreover, since the number of

verified complaints of extrajudicial killings, murder attempts and, to a lesser extent, death threats has decreased, the bulk of violations now concerns not the right to life, but the right to due process. This trend is the result of various positive factors, most of which are directly linked to the gradual cessation of the armed conflict."[1]

15. "There has also been an appreciable decrease in the number of complaints of torture admitted and confirmed, marking an improvement in this highly sensitive aspect of the right to integrity and security of person."

16. "It is encouraging that, during the period under review, no cases of enforced disappearance were proved and the number of complaints admitted in connection with this serious human rights violation declined appreciably. This strengthens the perception that this reprehensible criminal practice is not occurring in Guatemala today."

17. According to MINUGUA, the positive changes observed derive from increased levels of hierarchical and administrative control by the Government over its agents, making it possible to strengthen the principle of authority.

Seventh report: 1 January - 30 June 1997 (A/51/936)

18. Concerning verification of the principal rights under the Comprehensive Agreement on Human Rights,[2] "The Mission admitted for verification 182 complaints covering 1 503 alleged violations. These figures indicate a continued decrease in the number of claims admitted and the number of alleged violations they involved. The decrease is more pronounced in relation to the rights to life, personal integrity and security, and individual freedom, and indicates, in the judgement of the Mission, a drop in the number of violations by agents of the State. With particular regard to verification of the right to life, the reported cases refer not only to acts committed directly by agents of the State in the exercise of their duties, but also to situations in which neglect of the State's duty to safeguard is evident."

19. The Mission admitted 44 complaints (24.18 %) relating to the right to life, and recorded a sizeable decrease in those attributing the violation to direct action by State agents. The bulk of the claims related to extrajudicial executions or deaths in violation of legal guarantees (23), with the remainder comprising death threats (15), and attempts at extrajudicial execution (6).

Eighth report: 1 July 1997 - 31 March 1998 (A/52/946)

20. During this period 50 complaints concerning the right to life and 47 concerning the right to integrity and security of person were admitted for processing.

21. In this report MINUGUA states (para. 4): "The human rights situation in Guatemala presents two main characteristics. Firstly, the number of violations of human rights regarded as having priority under the Comprehensive Agreement has gradually decreased, mainly because of the ending of the armed conflict and the demobilization of some of its main protagonists, such as the voluntary civil defence

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[1] Sixth report of MINUGUA, Commitment I, General commitment to human rights, p.7.

[2] Agreement signed between the Government and the National Revolutionary United Front (URNG) on 29 March 1994.

committees (CVDC), the military commissioners and the National Revolutionary United Front (URNG). Moreover, the violations recorded in recent periods, even when very serious, were not generally politically motivated or sponsored covertly by the Government.

22. The second characteristic is the continuing high level of violent crime coupled with a general feeling of insecurity, to such an extent that the main problem now concerns whether the State has the means to ensure respect for human rights, investigate violations and punish the perpetrators. To this may be added social problems, abuses and the structural shortcomings of the administrative and legal systems and the police, which seriously affect the population's enjoyment of basic human rights. The challenge before the State is to fulfil its obligations effectively, in full respect of human rights and within the rule of law."

Ninth report: 1 April - 31 December 1998 (A/53/853)

23. In this report MINUGUA states that it admitted for further processing 41 complaints concerning the right to life and 49 concerning the right to integrity and security of person.

24. MINUGUA also reports (para. 84): "The Mission's previous report, covering the period from July 1997 to March 1998, stated that one of the main factors militating against the enjoyment of human rights in Guatemala was criminal violence. This remains true in the current reporting period. The State's primary weakness in the area of human rights remains its inability to tackle the crime problem through the administration of speedy and full justice."

III. INFORMATION ON MATTERS ADDRESSED BY THE HUMAN RIGHTS COMMITTEE DURING ITS CONSIDERATION OF THE INITIAL REPORT OF GUATEMALA ON 3 APRIL 1996 (CCPR/C/79/Add.63)

A. The ending of armed internal conflict

25. On 29 December 1996, the signing of the Agreement on Firm and Lasting Peace between the Government and the National Revolutionary United Front (URNG) brought to an end 36 years of armed internal conflict in Guatemala.

26. A negotiating process which had lasted some 10 years (1987 - 1996) ended with the signing of 11 important agreements between the Government and the URNG, following analysis and discussion by the parties of the underlying causes of the conflict. Under the agreements, both parties undertook responsibilities and commitments with a view to implementing measures intended to overcome their differences and eliminate the causes of the war.

27. Outstanding among these agreements is the Comprehensive Agreement on Human Rights signed on March 29 1994, which is specifically concerned with respect for, and enjoyment of, basic human rights. Both parties agreed to commitments regarding the following: strengthening of institutions for the protection of human rights; measures against impunity; action to ensure that there are no illegal security forces and clandestine machinery; regulation of the bearing of arms; guarantees regarding freedom of association and freedom of movement; military conscription; safeguards and protection of individuals and entities working for the protection of human rights; compensation and/or assistance to the victims of human rights violations; and international verification of the peace agreements by the United Nations.

28. By virtue of its importance, the Comprehensive Agreement on Human Rights was the only one to come into force before the parties had reached agreement on a ceasefire; there was an urgent need to avoid violation of the right to life following the conflict, and sufficient willingness had been expressed to seek political and peaceful means of resolving it.

29. The agreements cover an entire catalogue of previously neglected concerns. These include resettlement of the population uprooted by the armed internal conflict, identity and rights of indigenous peoples, socio-economic aspects and agrarian situation, and strengthening of civilian power and role of the army in a democratic society.

B. The army in the framework of a democratic society

30. The army is now an institution subordinate to the civil and democratic power of the nation, as demonstrated by the fact that it receives orders from the President of the Republic as army commander-in-chief.

31. The scope of the army's activities is determined by the appropriate provisions of the Constitution, the Military Code and the Army Establishment Act.

32. During the past two years, particularly since the signing of peace, the army's high command has gained improved control over the middle and lower ranks, which have been issued with standing instructions spelling out the army's duty and obligation to act within the law and respect people's human rights; they have also been made aware of the consequences of not doing so.

33. In January 1996, between 250 and 300 changes were made to various army military command structures, together with an overhaul of 80 per cent of all officer posts, including the retirement or relieving of responsibility of at least 10 persons holding the rank of general. These changes were introduced by the President of the Republic as part of a re-organization of the armed forces aimed at putting them to the best possible use in the new era of peace, reconciliation and democracy.

34. The commitment made under the peace agreements to a 33 per cent reduction in the army was fulfilled by December 1997. A reduction of 37.35 per cent was achieved, with the number of those in regular service falling from 50,160 in 1996 to 31,423, including 1,370 members of the mobile military police, which was disbanded.

C. Measures against impunity

35. With regard to the civil and military security forces, impunity has been tackled from within the very structures of State.

36. In 1997 a purge of the civil security forces resulted in the expulsion of 168 police officers found to have committed illegal acts or inappropriate conduct, and who could not be tried on such charges. Moreover, police officers found to have acted with insufficient respect for human rights were relieved of their duties. Persons with known links to human rights violations have been prevented from joining the civil security forces.

37. The role of the Office of Professional Responsibility (ORP) within the police force has been strengthened. It continuously monitors those who work in civil security with a view to detecting acts they

may commit that violate human rights and contravene the law, and can initiate their dismissal from the force and/or their prosecution by the competent authority.

38. As to the army, the high command has displayed a firm resolve to place at the disposal of the civil authorities all members (senior officers, junior officers, specialists and the rank and file) accused of alleged human rights violations or found to have committed a criminal act. In this regard, it should be noted that in 1996, by Congressional Decree 41-96, the Military Code was amended so that it alone could be used in judging military crimes. The Code of Criminal Procedure applies to common crimes or related misdemeanours committed by the military, which are judged by the common courts in accordance with the Judiciary Act.

39. In the case of misdemeanours arising from purely military acts, the accused persons are subjected to internal disciplinary measures in accordance with the provisions of the Army Establishment Act and the Military Code, or the internal regulations.

40. There have been three recent instances in which the Ministry of National Defence has temporarily and/or permanently suspended senior officers and placed them at the disposal of the civil judicial authorities for a decision on their legal status. These are known as the Xaman, Myrna Mack and Moreno cases.

D. Measures to tackle poverty

41. The Government's policy for tackling poverty is based on subsidiarity, communal co-operation, joint responsibility and self-help, convergence and proximity to people's needs. At community level, the central policy-making bodies are represented by local government, the development boards and the Social Funds.

42. In 1998, a new programme intended to strengthen institutions was introduced, with the focus on promoting local development. The programme is co-ordinated by the Executive Secretariat of the Presidency, assisted by governmental bodies, namely the Presidential General Secretariat for Planning and Programming, the Social Investment Fund, the National Fund for Peace and the Institute for Municipal Affairs. This inter-institutional effort seeks to strengthen local governance by providing expert advice and funding, which is also offered by the technical units of the development boards. Priority is attached to addressing the needs of the population, and to the planning and implementation of community projects.

43. At the national level there are three main strands to anti-poverty policy: An emergency programme focusing on high-priority target groups and regions; a programme of institutional reform in the sectors worst hit by poverty; and a programme concerned with realigning regional policy and achieving more efficient public spending.

44. The emergency programme is basically operated by the Social Funds, whose financial involvement is intended to be temporary. In 1995, four of the main funds (Social Investment Fund, National Fund for Peace, Guatemalan Indigenous Fund and Joint Fund for Communal Development) carried out projects amounting to 216 million quetzals. In 1996, that investment was exceeded (403 million quetzals). In 1997, the sum invested rose again to 887 million, and in 1998 to 1,784 million quetzals (US $ 228,915,755).

45. The institutional reforms are designed to achieve administrative de-centralization through the transfer of decision-making powers, resources, and public service administration to regional and local government.

46. The realignment of regional policy consists in readjusting policy to take adequate account of poverty, and in making public spending on such matters more efficient.

47. The areas concerned are health, education, drinking water, environmental health, housing and rural development.

48. Another measure taken, by Congressional Decree 24-99 of 8 June 1999, was to establish the Land Fund (FONTIERRAS) as a public, participatory service intended to facilitate access to land and to create the conditions for full and sustainable rural development based on profitable projects involving farming, forestry and hydrobiology. Among its main objectives are the provision of suitable funding machinery for facilitating land ownership by individual farmers or organized groups thereof, and to ensure that the natural resources on such land are used in accordance with the criteria of economic and environmental sustainability. A further aim is to devise and promote policies and programmes enabling women to obtain credit for land purchase, and to provide worthwhile schemes that help them achieve their objectives in that sphere.

49. The peace agreements call for the establishment of a national body to deal with land disputes. Accordingly, Government Decision 452-97 of 4 June 1997 established the Presidential Office for Legal Assistance and the Resolution of Land Disputes (CONTIERRA). During the period from 15 July 1997 to 31 July 1999, this department handled 402 land dispute cases, of which 176 have been settled. CONTIERRA is responsible for the following matters: a) disputes over rights; b) access to land; c) occupation; d) regularization; and e) territorial limits.

50. At another level, the peace agreements constitute a general framework of legislative and administrative reforms intended to promote measures for improving the population's living standards, mainly by facilitating access to basic services by the groups considered most vulnerable, who include women, children, the indigenous population, repatriated persons, and refugees or displaced persons. The areas of priority are education, health and job creation.

E. Payment of compensation to the victims of human rights violations

51. The Comprehensive Agreement on Human Rights states the following with respect to compensation and/or assistance to the victims of human rights violations[3]: "The Parties recognize that it is a humanitarian duty to compensate and/or assist victims of human rights violations. Said compensation and/or assistance shall be effected by means of government measures and programmes of a civilian and socio-economic nature addressed, as a matter of priority, to those whose need is greatest, given their economic and social position." Congressional Decree 145-96, the "National Reconciliation Act", states the following (article 9): "The State shall assist, as a humanitarian duty, the victims of human rights violations deriving from the armed internal conflict. The assistance shall be co-ordinated by the Secretariat for Peace, through governmental measures and programmes of a civilian and socio-economic nature addressed, as a matter of priority, to those who most require it, given their economic and social

[3] Section VIII.1 of the Comprehensive Agreement on Human Rights between the Government and the URNG signed in March 1994.

position. The Secretariat for Peace shall take into account the recommendations made on such matters by the Commission on Historical Clarification."

52. The report of the Commission on Historical Clarification (CEH) states that it is the responsibility of the Guatemalan State to formulate and promote a policy of reparation for victims and their families. The main recommendations are:

- The State must establish and implement a national reparation programme for victims;
- The programme shall comprise individual and collective measures based on the principles of equity, social participation and respect for cultural identity;
- The reparation measures may be individual or collective;
- The beneficiaries of the reparation measures may be the victims of violations or their families.

53. In order to realize this commitment, the Presidential Secretariat for Peace (SEPAZ) is implementing the National Compensation Programme. The worst affected communities in the departments of Alta Verapez and Huehuetenango are currently being assessed with a view to providing them with the urgent projects they have requested.

54. Moreover, the Guatemalan government, through SEPAZ, and the National Peace Fund (FONAPAZ) have signed an agreement with the International Development Association (IDA) establishing a programme of assistance for the victims of human rights violations. The programme, which has a community-based approach, is being implemented in the departments of El Quiche and Chimaltenango in response to the recommendations of the CEH. The objective is to provide assistance for the victims of human rights violations committed during the armed conflict, especially the most vulnerable, who are mainly widows and orphans.

F. Action taken by the police to implement judicial orders

55. The operational and administrative efficiency of the police is a matter that has been addressed, and tangible progress has been made since the establishment of the National Civil Police by Congressional Decree 11-97 dated 4 February 1997. The new body has led to greater police professionalization.

56. With regard to the implementation of judicial orders, particularly arrest warrants, the Presidential Commission for Human Rights (COPREDEH) has collaborated closely with the Criminal Investigation Sub-directorate of the National Civil Police in securing the arrest of several persons accused in cases directly involving human rights violations.

G. Paramilitary groups

57. There are no legally recognized paramilitary groups in Guatemala. In July 1996 the process of demobilizing the voluntary civil defence committees (CVDC's) began, and ended in December of the same year. A total of 200,000 members were demobilized. Moreover, on 28 November 1996

Congressional Decree 143-96 was issued in order to abolish Decree-Law 19-86, under which the voluntary committees had been set up.

58. In addition, the military commissioners ceased to be legally recognized following the issuance of Congressional Decree 79-95 amending the Army Establishment Act under which they had been introduced.

59. Any one found to have been involved in criminal acts as a member of the two disbanded organizations may be detained and subjected to due process by the authorities.

H. Strengthening of the national bodies responsible for promoting and protecting human rights (Human Rights Procurator, Presidential Commission for Human Rights, Public Prosecutor's Department and Judiciary)

1. National Civil Police

60. This new institution, established by Congressional Decree 11-97 on 15 July 1997, is rooted in respect for national and international human rights standards, to which may be added all the elements of the peace agreements that determined the structure and functions of the new body, notably the Agreement on Strengthening of Civilian Power and Role of the Army in a Democratic Society. One important characteristic of the National Civil Police is that, in recognition of Guatemala's multilingual, multicultural and multiethnic nature, the right to equal treatment of all its members is respected, and women police officers enjoy the same working and service conditions as men.

61. In 1997, an initial group of 1,584 police officers graduated from the National Civil Police Academy after taking a special retraining course run by the Academy with the assistance of the Spanish Guardia Civil. Human rights were a major topic on the curriculum (attached to this report). A second group of 1,253 persons who graduated at the end of 1997 were assigned to police stations around the country. In 1997 an average of 278 women attended the various courses and special presentations given by the Academy.

62. During the first six months of 1998, a total of 4,000 police officers were deployed across all the municipalities of Guatemala City.

63. By July 1999 the countrywide deployment of Civil Police officers was complete; the total of 13,161 included 5,026 new recruits and 8,135 who had undergone retraining. The availability of fresh manpower has made it possible to establish a police presence in locations where there had previously been none. In the near future, the intention is to have 20,000 police officers stationed throughout the country

64. The technical and financial support provided for the Civil Police by the Spanish Guardia Civil and by the International Programme for Training in Criminal Investigation of the United States Department of Justice (ICITAP) has been decisive in bringing about the many changes and other achievements needed to help the organization respond to the new challenges in a changed national situation.

65. Throughout 1998 and 1999 intensive efforts have been made to attract funding for the project to construct a building to house the Civil Police Force's criminal investigation laboratories. Under a special

programme, the United States will provide between 1.5 and 3 million dollars for acquisition of the necessary equipment. The Guatemalan government has set aside a site for construction.

66. Progress has been made in establishing mechanisms of communication and collaboration between the Civil Police and other national bodies concerned with the administration of justice. One such development has been the signing of a letter of understanding with the Judiciary, the Ministry of the Interior and the Public Prosecutor's Department, with the aim of forming a body to improve co-ordination with these three institutions.

2. The Army

67. In the past three years, the Army has undergone internal changes stemming mainly from the peace agreements that followed the end of the armed internal conflict.

68. As stated above, the CVDC's were disbanded and the legal status of the military commissioners repealed. Other changes were the demobilization and abolition of the mobile military police, and the closing-down of at least four military zones and several detachments deployed in the interior of the country. This was preceded by a series of lectures given to demobilized troops by the Army's civil affairs units, aimed at familiarizing them with their new role as part of civil society in peacetime.

69. The National Peace Fund (FONAPAZ), in compliance with the Agreement on Strengthening of Civilian Power and Role of the Army in a Democratic Society, has designed and implemented programmes for those demobilized from the mobile military police, one of which is concerned with provision of financial compensation according to length of service and the other with assistance designed to facilitate socio-economic reintegration. They amount to 48 million quetzals (US$ 6,159,168), to which the international community has contributed. Phase I (Vocational guidance) has already benefited 800 people and Phase II (bricklaying, carpentry, motor mechanics, nursing, cookery and industrial baking) 326 people. Phase III provides a reference service and job opportunities (including small enterprise projects).

70. In 1997 the Army began implementing the "Plan for Institutional Re-organization 97" as part of the 1997 Plan of Operations towards Peace, which sets out procedures relating to organization, downsizing, doctrine and military intelligence in conformity with the content of the peace agreements.

71. The commitment to reduce the size of the Army by 33 per cent, subject to verification by MINUGUA and official recognition by the Ministry of National Defence, was fulfilled by December 1997. A reduction of 37.35 per cent was achieved, with the number in regular service falling from 50,160 in 1996 to 31,423. Among those demobilized were 1,370 members of the mobile military police. The reduction is an important part of the Army's efforts to professionalize its members and redefine its functions in a peacetime context. Those functions now include reforestation, provision of emergency support in crises or high-risk situations such as fires and natural disasters, and a heightened inspection and surveillance role in frontier areas, together with co-ordinated measures for supporting the civil authorities' efforts against drug trafficking and ordinary and organized crime.

72. In the sphere of training, courses on human rights have been incorporated at various levels into internal programmes at army centres of training and instruction such as the Polytechnic School, the military institutes of intermediate training (Adolfo.V.Hall), the Centre for Military Studies and the Intelligence School. From April to August 1998, with support from the Inter-American Institute of

Human Rights, a training project on "Security, human rights and democracy" was held for 170 army officers of various ranks, with the general objective of contributing to the peace process in Guatemala and stimulating further training on human rights within the army.

3. The judiciary

73. In 1999 the judiciary's budget allocation increased by comparison with 1998, and currently amounts to 366,480,708 quetzals (US$ 47,982,523). The following table shows the increasing contribution made under the constitution to the judiciary's budget over the past six years:

Funds allocated to the judiciary under the constitution in the past six years

Year	Percentage of regular budget allocated to judiciary under art. 213 of Constitution	Allocation in quetzals	Increase over previous year, in quetzals
1994	2.2	96,226,991	N/A
1995	2.2	97,372,260	1,145,200
1996	4.0	259,572,547	162,200,287
1997	4.0	266,133,322	6,560,775
1998	4.9	297,544,870	31,411,548
1999	5.46	366,480,708	68,935,838

Judiciary's budget over the past six years in relation to GNP

Year	GNP (thousands of quetzals)	Judiciary budget	Budget as % of GNP
1994	74,669,184.3	96,227,000	0.13
1995	85,156,692.7	97,372,300	0.11
1996	95,495,024.1	259,572,500	0.27
1997	107,873,445	266,133,300	0.25
1998	119,393,600	297,544,800	0.25
1999	135,444,500	366,480,708(*)	0.27

* (US$ 47,982,523.09)

74. On 5 December 1997 the Act establishing the Public Defender's Office was approved, and came into force on 13 July 1998. The Act complies with the provisions of the peace agreements regarding the transformation of the justice system; its content was determined by the Commission on Strengthening Justice, which was set up under the peace agreements.

75. In October 1997 the College of Legal Studies was reorganized. In particular, the appointment of a new director has triggered positive changes that have improved the professional capacities and standing of public defenders. There are currently 90 permanent and 75 temporary defence counsels nation-wide, and numbers are being increased. The efforts to professionalize judges have been assisted by other governmental institutions such as COPREDEH, which has contributed lectures on human rights for judges and supplied human rights teaching materials.

76. Agreement has been reached on setting up a Council for Legal Occupations, and also on reforming several articles relating to the administration of justice which are particularly instrumental in co-ordinating and harmonizing procedures. Moreover, the executive has granted the judiciary 5 million quetzals (US$ 641,580) to establish five new courts: four in the capital city and one in the municipality of Villa Nueva, in the department of Guatemala City. The Thirteenth Civil Court of Appeal has also been established.

77. The modernization and strengthening of the Guatemalan justice system is regarded as a fundamental element in clarifying the human rights violations that have occurred. For this reason, the judiciary established the Judiciary Modernization Commission in 1996. The Commission has produced a report on the judiciary and a modernization plan for the period 1997-2002. In response, in 1998 the judiciary implemented the following measures for improving the justice system:

A. Introduction of auxiliary centres for the administration of justice

Three auxiliary centres have been introduced in the capital city, Quetzaltenango and Escuintla.

In 1997 the auxiliary centre in the capital recorded 44,058 notifications relating to the following categories: civil, family, labour, enforcement in economic affairs and juveniles. In 1998 it received 83,689 notifications, i.e. an increase of 90 per cent over the previous year.

The above-mentioned centres are intended to prevent lawyers and the general public coming into direct contact with judiciary staff, in order to eradicate corruption and improve the service and the records system.

B. Establishment of the administrative centre for criminal matters

The administrative centre for criminal matters has been set up to receive and distribute prepared cases concerning crimes for which persons have been arrested. The centre receives claims, accusations, petitions, reports and documentation addressed to courts of first instance dealing with criminal matters, drug-related activities and crimes against the environment in the municipality of Guatemala.

The centre also implements acts of communication, such as notifications, requests, seizures, evictions and similar orders issued by the courts.

C. New courts

62 magistrates courts located in municipalities in the interior of Guatemala;

4 courts of first instance located in Santa Lucia Cotzumalguapa, Escuintla; Malacatan, San Marcos; Villa Nueva, Guatemala; and Poptun, El Peten;

3 chambers of appeal: one in Suchitepequez concerned with labour and social security; one in Guatemala City concerned with civil and commercial matters; and one in Alta Verapaz which is mixed;

5 community criminal courts located in San Luis, Peten; San Miguel Ixtahuacan, San Marcos; San Andres Semetabaj, Solola; Santa Maria Chiquimula, Totonicapan; and San Rafael Petzal, Huehuetenango;

5 labour, social security and family courts in: El Peten, El Quiche, Santa Rosa, Sacatepequez and Zacapa;

12 criminal courts of sentence, 7 in Guatemala City and one each in the following departments: Solola, Totonicapan, Jalapa, Sacatepequez and Baja Verapaz;

8 juvenile courts based in the following departments and municipalities: Escuintla, Quetzaltenango, Zacapa, Chimaltenango, Jutiapa, El Peten, Mixco and the capital;

3 civil and commercial courts in Guatemala City

D. Infrastructure

Construction

Following a process of bidding and negotiation, construction of 24 magistrates courts began on 19 January 1999 across the country. In June 1999 work started on the court complex at Chiquimula, in the department of Chiquimula.

Refurbishment and extension

The premises of the courts of sentence in Cuintla have been refurbished. Contracting has been completed for construction of a second floor to extend the court buildings in Puerto Barrios, and an extension to the court building in Chimaltenango has been completed.

E. Improvements to the interpretation service

An office has been set up to co-ordinate the interpretation service, and a process of appointing university-trained interpreters has been initiated.

F. Alternative conflict resolution programme

The first pilot mediation and conciliation centre opened on 25 September 1998. By 31 December of that year the centre had taken on 98 cases, of which 29 ended in agreement following mediation, 17 are ongoing and 8 ended without agreement following mediation. Mediation was not possible in 44 cases owing to the absence of one of the parties.

G. Legal occupations act

The Congress of the Republic is currently examining a Legal Occupations Act intended to regulate relations between the judiciary and its auxiliary and administrative staff. The bill provides for the establishment of the Council for Legal Occupations.

H. Public Defender's Office

By Congressional Decree 129-97 the Public Defender's Office became the Institute for Public Defence, thereby gaining the autonomy it required to achieve its objectives and to ensure equal access to justice for all citizens. The Institute became an independent State body in July 1998. It now has 90 permanent defence counsels and 75 working in an ex officio (temporary) capacity.

I. Measures against corruption

The following action has been taken:

Improved regional supervision of courts. Two regional offices of the General Court Inspectorate have been introduced in the departmental capitals of Quetzaltenango and Zacapa, in order to improve the court control machinery.

Purging of corrupt staff. In 1998, 55 judicial and administrative staff were dismissed, and other employees have received less serious punishments.

J. College of Legal Studies

Decision 13-98 of the Supreme Court of Justice of 27 May 1998 brought into force the Regulations governing the College of Legal Studies. The new rules establish the College as the leading institution for legal training and education, whether initial or advanced, and as the body responsible for ensuring competitive, objective and impartial selection of entrants to the judiciary based only on the criteria of merit, ability, interest, participation and approval of resources.

From October 1997 to October 1998, the College of Legal Studies implemented the following training activities for staff from the judiciary:

- 12 seminars with 594 participants

  Main topics: Children and young persons code, Disputation method, Crimes against liberty, Investigative and intervention skills with regard to Guatemalan criminal law;

- 19 courses with 320 participants

  Main topics: Disputation method, Evidence assessment, Procedural disputes and exceptions, Justification of sentence;

- 69 workshops with 1,318 participants

  Main topics: Criminal cases involving arrests, Reforms to the Code of Criminal Procedure, Interrogation in legal proceedings, Use of discretion in family courts, Psycho-cultural understanding of trial subjects, Legal determination of the death penalty, Violence in families.

The following training was also provided for applicants to various judge posts:

- 1 course for 27 applicants to community magistrate posts;

- 4 courses for 117 applicants to magistrate posts;

- 4 courses for 129 applicants to the post of judge of first instance.

K. New organization and management system for the judiciary

On 22 October 1998 there began the process of engaging a consultant to develop a new organization and management system for the judiciary intended to reorganize its jurisdictional and administrative aspects, including reorganization of the Law Office.

4. Public Prosecutor's Department

78. This governmental department has experienced wholesale change, including the following measures:

79. The Prosecutor's Manual was completed in 1997, with help from MINUGUA. It has been distributed throughout the Department, where it plays an important role in guiding staff conduct. Also in the context of staff training and professionalization, information leaflets have been produced entitled "What the National Police may and may not do" and "Institutional differences between the Public Prosecutor's Department and the Office of the National Procurator-General". Both leaflets have been distributed widely not only within the institution, but also to members of the public who come to request the Department's help or services, in order to help them understand and identify the roles of the institutions concerned.

80. A new information network has been set up in the Metropolitan region, with a view to improving case recording and procedures and making information transfer and records retrieval more systematic. In March 1997 a laboratory for the analysis of drugs and psychotropic substances was opened.

81. To improve investigative capacity, in 1997 the Investigation Service of the Public Prosecutor's Department was equipped with speech recognition software, video equipment, a spectrometer, micro-cassettes and photography equipment.

82. The Department's district offices were provided with computers and vehicles enabling staff to gain access to the remoter areas under their jurisdiction.

83. A special hall for internal training activities has been built at the Department's training unit. In 1997, 75 meetings, lectures and training courses were held there for 1,292 employees on topics relating to their work.

84. It is important to note here that, in accordance with the requirements of the Agreement on Strengthening of Civilian Power and Role of the Army in a Democratic Society, the Department held competitive examinations in 1997 to select district prosecutors, branch prosecutors, officials and auxiliary staff, and has revised the curriculum of its training unit.

85. Also noteworthy is the programme to reorganize district offices across the country, creating 240 new auxiliary posts. This effort will continue, with each district office being provided with the necessary computing equipment.

86. As part of this reorganization, each district office has been divided into two sections: the administrative affairs office and the office for the affairs of the victim, each having the resources it requires to fulfil the tasks relating to its geographical area. An example is the engagement of indigenous language interpreters to work in locations where they are needed.

87. The task of the administrative affairs offices is to deal promptly and efficiently with all reports of crimes; the offices for the affairs of the victim attend to the legal, psychological, medical and social needs of the victims of crimes.

88. In 1998 the Public Prosecutor's Department in Guatemala City was reorganized. There are now separate divisions covering women, children, economic crimes, administrative crimes and drug-related crimes. The restructuring will enable better use of the existing human and material resources.

89. Also in 1998, a new division dealing with organized crime was introduced.

90. In the same year, the Public Prosecutor's Department, the Judiciary and the Ministry of the Interior held joint training courses for prosecutors, judges and officers of the National Civil Police on "The scene of the crime", with the aim of improving the investigation process and minimizing impunity.

91. As a result of the efficiency measures taken by the Public Prosecutor's Department, a total of 1,342 public hearings were held in the context of criminal proceedings in 1998, an increase of 404 over the previous year.

5. Office of the Human Rights Procurator

92. In 1998 the budget of the Office of the Human Rights Procurator was increased by 10 per cent in relation to 1997. For 1999, the Congress of the Republic has approved an increase of 7 per cent over the 1998 figure.

93. That support, together with international co-operation, enabled the institution to set up new departments extending the services it offered to groups at high risk of having their rights violated. The following departments were introduced:

- Office for the defence of prisoners and due process;
- Office for the defence of indigenous peoples;
- Office for the defence of uprooted persons;
- Aid centres in Coatepeque (Quetzaltenango department) and Poptun (El Peten department).

94. I t is important to mention that in 1998 changes were made to this institution's administrative and financial systems in order to make procedures less bureaucratic and administrative management more flexible. As a result, the departmental aid centres have been strengthened, and they now benefit from improved administrative and logistical support in a context of administrative decentralization that allows them to become truly representative of the Procurator and the institution itself in their respective jurisdictions.

6. Special measures to protect officials engaged in the administration of justice and rights activists

95. In 1996 approval was granted to the Act establishing an Office for the Protection of Trial Witnesses and Persons involved in the Administration of Justice. It has proved difficult to apply, mainly for budgetary reasons. The Public Prosecutor's Department has proposed amendments designed to tackle the problems. These proposals are being studied, and if realized they should help bring in changes that will improve application of the Act. Nevertheless, by using existing resources the Service was able to protect 8 trial witnesses in 1998. The protection offered included travel expenses, living expenses, board and lodging, transportation, air tickets and other additional spending needed to ensure adequate protection of these persons.

IV. MEASURES TAKEN TO GIVE EFFECT TO THE COVENANT

Article 2

Care for the victims of violations of the rights contained in the Convention

96. The domestic legal system has special branches designed to ensure respect for and protection of the rights and freedoms of persons. Within the Public Prosecutor's Department, in addition to the divisions dealing with crimes against the environment, children and young people, and women, there is the Criminal Investigation Department, the Office for the Protection of Criminal Trial Subjects, the Office for Victims' Affairs and the Administrative Affairs Office.

97. The Office of the Human Rights Procurator aims to ensure respect for the human rights of Guatemalans, for which purpose it is authorized to receive and investigate complaints, issue verdicts on particular cases, and make recommendations to the Government on measures for promoting full observance of human rights in general.

98. As stated earlier in this report, the Presidential Secretariat for Peace (SEPAZ) implements a national programme for compensating the victims of the armed conflict. An evaluation is currently being made of the worst affected communities in the departments of Alta Verapez and Huehuetenango in connection with their requests for high-priority projects.

99. Likewise, the Government, through SEPAZ and the National Peace Fund (FONAPAZ), has concluded an agreement with the International Development Association (IDA) setting up a programme of assistance for the victims of human rights violations. This programme is being carried out in the departments of El Quiche and Chimaltenango. Its community-based approach is in line with the recommendations of the Commission for Historical Clarification (CEH). The programme's objective is to assist victims of human rights violations relating to the armed conflict, particularly the most vulnerable such as widows and orphans.

100. The National Committee for the Care of Repatriated Persons, Refugees and Displaced Persons (CEAR) was set up to provide those groups with the basic elements they needed in order to progress towards a return to working life. From 8 February 1986 to 30 June 1999, the Committee organized the return to Guatemala of 42,437 people who had been in hiding along the border with Mexico as a result of the armed conflict. The CEAR was dissolved on 30 June 1999.

Mechanisms for informing the public about the rights contained in the Covenant

101. At the institutional level, from February 1997 to March 1998 the State of Guatemala, assisted by the Office of the United Nations High Commissioner for Human Rights, implemented training activities on "International instruments relating to human rights and the rights of indigenous peoples", including the International Covenant on Civil and Political Rights. The activities were addressed to the training unit of the Public Prosecutor's Office, the Public Defender's Office, non-governmental organizations, the College of Legal Studies, the Co-ordinating body for Maya Peoples' Organizations (COPMAGUA), and the 70 organizations forming the body known as FUNDAMAYA. The training was attended by 300 people, all of whom received a compilation of international human rights instruments. In June, July and August 1999, the High Commissioner's Office held a course on "International Instruments and mechanisms for human rights protection" for 40 members of NGO's and students taking the master's degree in human rights at San Carlos University in Guatemala City. The course included study of the Covenant.

102. A permanent feature of COPREDEH's educational activities in the field of human rights is the study and analysis of the international human rights instruments ratified by Guatemala, which include the International Covenant on Civil and Political Rights. The training is addressed in particular to local government figures and others in authority in the interior of the country, including mayors, governors, primary and secondary school teachers, and the armed forces.

103. In August 1997, COPREDEH organized an inter-institutional forum of governmental departments, intended as a follow-up to Guatemala's commitments deriving from international human rights Conventions and Agreements. This provided a useful mechanism for making public officials aware of the content of such international instruments, especially the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. COPREDEH has succeeded in raising awareness of the importance of supporting these international instruments, and of the need for governmental organizations to initiate specific measures for their implementation.

104. As part of its contribution towards building peace and widespread respect for human rights in Guatemala, COPREDEH has produced the following publications with the help of the European Union:

- "International instruments to which Guatemala is a party". This has been produced in 10,000 copies, and includes the International Convention on Civil and political Rights. It has been distributed to many national institutions, all the universities, the College of Lawyers and Notaries, trades union headquarters, the National Office for Women and the Women's National Forum.

- An information card to be supplied by the National Civil Police to persons they arrest. The card gives details of the following articles of the Constitution: No.7 on notification of cause of arrest, No.8 on the detained person's rights, No.13 on grounds for an arrest warrant, and No.14 on presumption of innocence and public trial. It also includes article 36 of the Vienna Convention on Consular Relations in relation to the right of an arrested foreigner to communicate with the consular authorities of his country of origin. On 16 February this year, 25,000 of these cards were delivered to the National Police Directorate.

- "Manual of Human Rights Education". This manual, developed by the Presidential Human Rights Commission, is intended as an introductory guide to human rights education, aimed at helping those who are learning to be trainers in this field. The manual has seven sections: general notions of human rights (including information on the rights contained in the Covenant), rights of indigenous peoples, rights of the child, women's rights, right to a clean environment, rights of the handicapped, and rights of persons with HIV/Aids. 5,000 copies have been printed.

- "Human Rights Instruments for the Protection of Women". This document includes the Convention on the Elimination of All Forms of Discrimination against Women; the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women; and the Convention on the Political Rights of Women, as well as domestic laws such as the Act on the Dignification and Full Advancement of Women. 10,000 copies have been printed.

- "Human Rights Instruments in the Administration of Justice". The purpose of this compilation is to bring together in a single document the main instruments affecting the administration of justice, including: the Convention against Torture and other Cruel, Degrading or Inhuman Treatment or Punishment; the Declaration on the Protection of All Persons against Enforced Disappearance; the Standard Minimum Rules for the Treatment of Prisoners; The United Nations Standard Minimum Rules for the Administration of Juvenile Justice; and the Code of Conduct for Officials Responsible for Law Enforcement. 10,000 copies have been printed.

- "International Human Rights Instruments in the Inter-American System". This compilation brings together in one document the main instruments of the Inter-American System for the Promotion and Protection of Human Rights. The principal aim of the document is to inform as many Guatemalans as possible about the benefits and scope of application of the Inter-American System. 10,000 copies.

- "Freedom of Expression in National and International Legislation". This compilation contains the Broadcasting of Ideas Act and the provisions relating to freedom of expression in the Guatemalan Constitution and the Criminal Code, the Universal Declaration of Human Rights, the American Convention on Human Rights, and the International Covenant on Civil and Political Rights, among others. It also contains Consultative Opinion No. 5 of the Inter-American Court of Human Rights concerning the qualifications of journalists. 10,000 copies.

- "The Geneva Conventions of 12 August 1949" (Volume I) and "The Protocols additional to the Geneva Conventions of 1949" (Volume II). 10,000 copies of each.

105. The Office of the Human Rights Procurator carries out extensive educational work in both formal and non-formal spheres (leading welfare and health activists, community leaders, trades unionists, political parties, displaced and returned persons, imprisoned criminals and NGO's). This training has also been provided for members of the armed forces, who have attended courses and conferences on human rights.

106. Below are given details of the education and training received by sector, with annual numbers of participants:

	Participants			
	1995	**1996**	**1997**	**1998**
Formal education				
Seminars-workshops	15,294	17,722	22,770	23,967
Conferences	69,397	117,143	71,792	49,364
Non-formal education				
Seminars-workshops	24,560	29,910	16,299	17,616
Conferences	25,366	21,945	71,792	29,492
Armed forces				
Seminars-workshops	2,587	3,708	1,767	220
Conferences	4,419	632	6,519	125
Total	141,623	191,060	195,939	120,784

Source: Annual reports of the Office of the Human Rights Procurator

107. With respect to the legislative or other provisions for implementing the rights identified by the Covenant, please refer to the information given in other sections of this report.

Article 3

108. In Guatemala, the practice of equality between men and women has not yet reached the desired levels, since certain acts of de facto discrimination against women continue to be a feature of everyday life. These acts arise mainly from misunderstandings in society concerning differences between men and

women. However, the situation is improving daily, and there is no doubt that in recent years Guatemalan women have taken leading roles in many fields and have helped their country make progress in all spheres of activity. Below are described the principal measures taken for the overall advancement of women, on equal terms with men and in accordance with the rights enshrined in the Covenant.

109. Attached to the Ministry of Labour and Social Security is the National Office for Women (ONAM), whose main tasks are:

- To promote and co-ordinate programmes and projects for women, and to achieve recognition for their contribution to national productivity and reproductivity;
- To support the planning and implementation of national and regional gender-based programmes;
- To act as focal point for national and international organisations supplying financial and technical assistance relating to projects for and involving women;
- To establish communication, information and co-ordination systems with national and international bodies specifically concerned with women;
- To promote the reform of laws that discriminate against women and the promulgation of new laws.

110. In 1996, ONAM initiated a project called "Women and legal reforms", which is sponsored through co-operation from the Low Countries, Sweden, UNIFEM and UNDP. Its main tasks include submitting proposals for legal reforms that favour women and mounting information campaigns to make the public aware of women's rights, with the overall objective of eliminating de facto or de jure inequalities. Key players from the Executive, the Legislative and the Judiciary are involved in the campaign.

111. As a consequence of proposals put forward under this project, the Congress of the Republic approved Decrees 80-98 and 27-99, which amended or repealed certain articles of the Civil Code containing provisions that discriminated against women in respect of their matrimonial rights.

112. Other proposals made in the framework of "Women and legal reforms" are:

- Amendments to the Criminal Code;
- Amendments to the Labour Code;
- Amendments to the Health Code;
- Amendments to the State Civilian Pensioners Act;
- Amendments to the Electoral and Political Parties Act;
- Amendments to the Constitutional Law on the Guatemalan Social Security Institute;
- Amendments to the Constitutional Law on the Guatemalan Diplomatic Service;
- Amendments to the National Education Act;

- Amendments to the Civil Service Act;
- Amendments to the Development Boards Act;
- Draft law on sexual harassment;
- Draft law on labour protection in private homes.

113. Proposals have also been made for educational reforms based on the commitments to sexual equality entered into under the peace agreements, with the objective of taking affirmative action to advance the condition of children and women.

114. In general terms, the proposed legal reforms seek to establish the normative framework needed to help strengthen children's identity and visibility, beginning with the elimination of the existing discrimination against children, young people and adult women.

115. In compliance with the Convention on the Elimination of All Forms of Discrimination against Women, and with the aim of strengthening sexual equality in education, Government Decision No. 711-93 was issued on 3 December 1993. This establishes an Inter-institutional Committee comprising representatives drawn from various governmental bodies, namely the National Office for Women, the National Education Board, the System for the Enhancement of Human Resources and Curriculum Development, the National Centre for Textbooks and Teaching Materials, and the Department for Rural Socio-educational Development, as well as from NGO's. The purpose is to introduce measures designed to eliminate sexual stereotypes from textbooks. The Committee's work has resulted in the production of such textbooks.

116. With respect to equality of rights between couples and children, a new Children and Young Persons Code has been issued and is expected to come into force in March 2000. It embraces children's rights on the basis of their equality as individual persons in relation to the rest of the population and within the family.

117. In September 1992 the Labour Code was amended by Congressional Decree 64-92, resulting in the following improvements to working women's situation:

- Amendment of article 152 enabling working mothers to receive maternity leave on full pay for 30 days prior to the birth and 54 days afterwards, with the possibility of adding all unused pre-birth entitlement to the post-birth entitlement, so that 84 days can be taken after the birth. This amendment also increased the post-birth entitlement from 45 to 54 days.

- Further amendment of article 152 entitling women who adopt a male or female child to 45 days' leave from the time of the child's arrival in the home, to allow for familiarization. Women wishing to apply must present the appropriate documents showing proof of adoption.

- Amendment of article 151 prohibiting employers from: "a) advertising, by whatever means, job vacancies specifying requirements based on sex, race, ethnic origin or marital status, except when the nature of the job calls for a person with particular characteristics, in which case the employer must request permission from the General Labour Inspectorate and the National Office for Women; b) differentiating between single women and those

either married or with family responsibilities where a job is concerned; c) dismissing pregnant or breastfeeding employees, who have the right to be retained except in the event of serious failure to fulfil contractual duties, as stipulated in article 177 of the Labour Code. In such a case, the employer must apply to the labour courts, prove that default has occurred, and may not carry out the dismissal without receiving the court's formal written permission. Should the employer fail to comply with that provision, the employee may go to court to exercise her right to be reinstated in the post she previously occupied, and has the right to receive unpaid salary for the period in which she was out of work; d) in order to enjoy such protection, the employee must advise her employer of her condition, whereupon she enjoys temporary protection and has up to two months to provide a medical certificate proving pregnancy, which entitles her to full protection; e) forcing pregnant women to carry out heavy physical work during the three months prior to the birth." This amendment increases the range of restrictions on employers with respect to women, particularly those who are pregnant.

118. In 1994 Guatemala ratified the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women - the Convention of Belem do Para. Subsequently, by Congressional Decree 97-96 the Act on Prevention, Punishment and Eradication of Intra-family Violence was issued, not only to bring domestic legislation into line with the international instruments on women that Guatemala had ratified, but also to give effect to protection for the victims of intra-family violence and to eliminate discrimination against women in the courts and other institutions.

119. On 10 December 1995, a group of Guatemalan women, advised by a non-governmental organization called the Centre for Legal Action on Human Rights (CALDH), brought an action in the Court of Constitutionality alleging that articles 232 and 235 of the criminal Code were unconstitutional, in that they classified the crime of adultery as applicable only to women, thereby violating the principles of equality enshrined in the Constitution. The articles in question governed adultery and concubinage. The Court decided that article 232 of the Criminal Code created a situation of inequality between spouses in treating only the wife as perpetrator of adultery and not the husband. Likewise, the Court ruled that articles 233 and 234 discriminated against the wife, in the sense that the rules on trial and exemption in respect of adultery did not accord the same rights to both spouses. The Court also decided that the articles in question accorded unequal treatment to identical acts, thereby introducing an unreasonable distinction to factually identical situations. Following its analysis of the situation, the Court of Constitutionality ordered the annulment of the above-mentioned articles of the Criminal Code.

120. On 9 March 1999, by Decree 7-99, Congress approved the Act on the Dignification and Full Advancement of Women. The Act's objectives are:

- To promote women's full advancement and their participation at all levels of economic, political and social life in Guatemala;

- To ensure that the fundamental constitutional rights relating to women's dignification and advancement, the international human rights conventions relating to women, and the action plans formulated by international conferences on women's issues, are promoted within the relevant public and private institutions.

121. It should also be pointed out that a bill to establish a national women's institute is currently passing through its second reading by Congress. The institute is intended to be the leading source of governmental policy designed to achieve women's full advancement.

Some of the projects and measures carried out for women's benefit

122. The Charitable Works Secretariat of the President's Wife (SOSEP) and the National Office for Women, aided by UNICEF, have developed a project entitled "National policy for the promotion and advancement of Guatemalan women, equal opportunities plan 1997-2001". Its objective is to bring about qualitative changes in the condition and situation of Guatemalan women through measures, programmes and projects designed by Governmental institutions to promote women's full advancement and their participation in all social, economic, political and cultural contexts. The project is being scrutinized by the Social Affairs Unit, after which it will be submitted to Congress for consideration.

123. In September 1996, Government Decision No. 356-96 established the "Programme for the Promotion of Rural Women" which, with support from UNICEF, governmental and non-governmental organizations, operates in the spheres of health, education, basic services and income generation. The programme provides financial and technical support for improving the socio-economic conditions of rural women and their families living in poverty or extreme poverty and on a basis of inequality with men.

124. In compliance with one of the commitments established in the Agreement on the Identity and Rights of Indigenous Peoples, in August 1996 COPMAGUA set up the Standing Committee on Indigenous Women's Rights. In turn, on 12 December 1996 the Committee submitted to SEPAZ a plan for establishing the Office for the Defence of Indigenous Women. As described later in this report, that Office came into being on 21 July 1999.

125. Another important development has been the formation of the National Women's Forum on 12 November 1997 in order to give effect to the measures relating to women specified in the peace agreements. Governmental women's organizations use the forum to promote and suggest measures for implementing the commitments relating to women found in the peace agreements and in international conventions and treaties. The measures fall into four main categories: formulation of profitable projects; social development; civil-political involvement; and legislative reforms.

Participation by gender

126. Although women are becoming more involved in political, economic and social affairs, their presence as compared with men is still extremely disproportionate.

127. In 1997, one woman held a ministerial post in the Executive and six held deputy minister posts.

128. As to the Legislature,[4] from 1986 to 1995 its membership of 107 remained the same: 100 men and 7 women. Now, out of 80 members, twelve are women and the rest are men.

129. According to the 1997 statistics relating to the Judiciary, only 2 out of 13 judges posts were occupied by women. At the Court of Appeals, there were 47 male judges and 11 women. Out of

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[4] Study entitled "Report on women's situation in Guatemala" prepared by SOSEP, 1997.

119 judges of first instance, 91 were men and 28 women. Out of 216 magistrates, 189 were men and 27 women.

130. As to participation in education, the Ministry of Education recorded the following statistics for 1998:

Level	Men	Women
Bilingual pre-primary	50.7	49.3
Nursery pre-primary	51.7	48.3
Primary children	54.3	45.7
Primary adults	60.8	39.2
Basic	60.8	39.2
Comprehensive	50.4	49.6

131. There is a striking difference between the proportions of men and women, and the Ministry of Education is initiating measures, such as the Girls' Programme, designed to attract and retain girls in rural areas. The measures are intended to reduce the imbalance and achieve greater equality of participation in education.

132. In higher education, the most recent statistics available from the San Carlos de Guatemala National University, those for 1995, show that 49,125 students were men (63.8%) and 27,926 women (36.2%).

133. For the private universities the information, again relating to 1995, is not disaggregated by sex:

Francisco Marroquin University	9,500 students
Mariano Galvez University	11,000 "
Valle de Guatemala University	1,711 "
Rafael Landivar University	15,000 "

134. The private universities estimate that around 40 per cent of their students are women.

Article 4

135. Article 138 of the Political Constitution of Guatemala states: "Limitation of constitutional rights: It is the duty of the State and the authorities to maintain the inhabitants of the Nation in the full enjoyment of the rights guaranteed by the Constitution. However, in case of invasion of the country's territory, grave disturbance of the peace, activities against the security of the State or public disaster, the full applicability of the rights referred to in articles 5, 6, 9, 26, 33, the first paragraph of article 35, the second paragraph of article 38 and the second paragraph of article 116 may cease. Should any of the cases indicated in the preceding paragraph occur, the President of the Republic shall make the relevant declaration by means of a decree issued in Council of Ministers and the provisions of the Law on Public Order shall then apply. In the case of a state of preparedness, this formality shall not be necessary."

136. Article 139 states: "Law on Public Order and states of exception. Everything relating to these matters is governed by the Constitutional Law on Public Order."

137. "The Law on Public Order shall not affect the functioning of State bodies and their members shall at all times enjoy the immunities and prerogatives they are entitled to under the law; nor shall it affect the functioning of political parties."

138. "The Law on Public Order shall establish appropriate measures and functions in accordance with the following scale:

- State of preparedness;
- State of emergency;
- State of public disaster;
- State of siege; and
- State of war."

Functions of the Army and the National Civil Police during periods of exception

139. The Law on Public Order, in Chapter V on State of Siege, stipulates in article 16: "The Executive shall decree a state of siege not only on the grounds that terrorist activities, sedition or rebellion threaten to change public institutions by violent means or when grave events place constitutional order or State security in danger, but also when strong evidence is reported or found indicating the likely occurrence of acts of sabotage, fire, kidnapping or abduction, assassination, armed attacks against individuals and the civil or military authorities, or other forms of terrorist or subversive crime. For the purposes of article 152 of the Constitution of the Republic, the above-mentioned acts or strong evidence of their likely occurrence shall be considered as tantamount to civil war."

140. Article 17 states: "During a state of siege the President of the Republic shall direct the Government in his capacity as Commander-in Chief of the Army, through the Ministry of National Defence."

141. Article 18 states: "All State authorities and entities, whatever their nature, are obliged to provide such assistance and co-operation as the military authority may require, within their respective spheres of competence."

142. The conduct of the Army in a state of siege is set forth in article 19 of the Law on Public Order, as follows: "In a state of siege all the measures applicable to states of preparedness and emergency apply, and the military authority may also: 1) Supervise or disband without notice or warning any organization, body, association or group, whether or not it is a legal entity; 2) Order the detention or arrest, without the need for a warrant or summons, of any person who belongs or may have belonged to the organizations referred to in the second paragraph of article 64 of the Constitution; 3) Use such preventive, defensive or offensive measures as circumstances may require in order to repel or suppress any action, individual or collective, that contradicts provisions, decisions or decrees issued for the purpose of restoring normality."

143. States of exception in Guatemala are decreed by the President of the Republic sitting in Council of Ministers, which shall include representation from the entity responsible for performing and overseeing the measures to be taken. The decree shall call upon the Congress of the Republic to meet and, within three days, consider, ratify, amend or reject its content.

144. The judicial bodies also oversee measures taken during states of exception, and may receive appeals on grounds of liability, amparo and habeas corpus.

145. Once a state of siege has ceased, the President of the Republic must submit to Congress a detailed report on what occurred and what measures were taken during the emergency.

146. The only such incident in the past five years occurred in November 1998. By Governmental Decrees 1-98 and 2-98 of 31 October and 6 December 1998, the President declared a state of public disaster for thirty days and imposed a nation-wide restriction on the constitutional guarantees covered in articles 6 (Lawful detention) and 26 (Freedom of transportation) of the Constitution, owing to the serious damage caused by Hurricane Mitch and the subsequent threats to life, safety and peace in the Republic. The state of public disaster lasted for thirty days from 2 November 1998.

Article 5

147. The State of Guatemala attaches great importance to protection of the human rights enshrined in the international human rights agreements to which is a party, including the International Covenant on Civil and Political Rights. During the period covered by this report, no case came to light in Guatemala in which the provisions of the Covenant were interpreted in a manner enabling the State, a group or an individual person to initiate activities or carry out acts intended to destroy any of the rights and freedoms recognized by the Covenant or to impose restrictions that exceed those in the Covenant's provisions.

148. Article 46 of the Constitution states: "Pre-eminence of International Law. The general principle is established that in the field of human rights, the treaties and conventions accepted and ratified by Guatemala take precedence over internal law." Since such international instruments form part of Guatemala's legal system, their provisions may be invoked in the Courts of the Republic in relation to any measure, of whatever nature, intended to destroy any of the rights protected by the Covenant on the basis of the latter's misinterpretation.

149. In this regard, it is important to mention that, through COPREDEH, the content of the Covenant is distributed and taught in the context of compilations of international human rights instruments and through conferences and seminars, as described below. The intention is to convey an implicit message to State employees and the general public concerning the spirit of the international human rights instruments and to promote their proper and widespread interpretation, thus avoiding situations in which misuse of the Covenant's provisions might lead to one human rights law being invoked to the detriment of another, with a resulting failure to implement fully any of the rights protected by the Covenant.

Article 6

150. On 29 December 1999 in Guatemala City, the Government of Guatemala and the URNG signed the Firm and Lasting Peace Agreement, thus putting an end to over three decades of armed conflict in Guatemala. The following agreements are incorporated:

- Comprehensive agreement on human rights;
- Agreement for the resettlement of the population uprooted by the armed confrontation;
- Agreement on establishing a commission for historical clarification of the human rights violations and acts of violence that caused suffering to the Guatemalan population;

- Agreement on identity and rights of indigenous peoples;
- Agreement on socio-economic aspects and agrarian situation;
- Agreement on strengthening of civilian power and role of the army in a democratic society;
- Agreement on a definitive cease-fire;
- Agreement on constitutional reforms and electoral regime;
- Agreement on bases for the legal incorporation of the URNG;
- Agreement on a schedule for the implementation, enforcement and verification of the peace agreements.

The peace agreements constitute an entire agenda designed to overcome the causes of the conflict and lay the foundations for future development.

Life expectancy and reduction of infant mortality

151. In the past quarter of a century, infant mortality in Guatemala has declined significantly, although it is still high as compared with other countries of the region such as Cuba, Costa Rica and Chile.

152. Estimates of mortality produced by the National Survey of Maternal and Child Health in 1995 (ENSMI-95) permit the conclusion that, during the twenty-year period from 1975 to 1995, infant mortality fell from 104 to 51 deaths per thousand live births, a decrease of 51 per cent.

Measures to prevent arbitrary deprivation of life and punish those responsible

153. As a consequence of the commitments undertaken by the State of Guatemala in the peace agreements, a new National Civil Police was established on 4 February 1997 and commenced operations on July 15 of the same year. As a professional security force and a guarantor of fundamental rights, the Civil Police prevents and follows up crime, conducting investigations and producing evidence in order to ensure that the perpetrators of criminal acts receive appropriate punishment.

154. In its investigative work, the National Civil Police assists the Public Prosecutor's Department, whose officials are responsible for conducting investigations and bringing law-breakers to justice.

155. The National Civil Police has reorganized the homicide section of its criminal investigation service; in addition to receiving new fittings, equipment and transportation, the staff have all been retrained in the effective investigation of crimes against life.

156. The Public Prosecutor's Department initiates criminal prosecutions and directs investigations relating to criminal proceedings. The Department has 62 branch offices, of which 35 are in Guatemala City, as well as 5 municipal offices and 22 district offices (one in every departmental capital). All are concerned with pursuing crime and endeavouring to have those responsible punished in a court of law.

157. The following reforms have been introduced to the Penal Code with respect to the right to life:

- Congressional Decree 48-95 defining the crime of extrajudicial execution;

- Congressional Decree 58-95 defining the crime of torture;

- Congressional Decree 33-96 defining the crime of forced disappearance;

- Congressional Decree 20-96, which amended the Penal Code by increasing the penalties relating to murder, parricide, manslaughter, qualified rape, violent indecent assault, aggravated indecent assault, theft, aggravated theft, robbery, aggravated robbery, and murder cases against any of the heads of State bodies. The penalties applicable to criminals of high social rank have been increased as a necessary measure intended to impose punishment in proportion to the effects of a crime committed against society.

Regulation of the bearing of arms

158. In Guatemala the rights to possess and bear arms are recognized in the Constitution, and governed by Congressional Decree 39-89, the Arms and Munitions Act. With respect to the use of arms by the armed forces and the security forces, the Act states: "The Army of Guatemala may make unrestricted use of any type of arms for the purpose of Guatemala's internal and external defence. Offensive weapons, chemical and biological weapons, explosives, appliances of war, nuclear weapons and specialized weapons of war are reserved for the exclusive use of the Guatemalan Army, provided they are not prohibited by the international agreements or treaties accepted and ratified by Guatemala. The security forces belonging to or controlled by the Interior Ministry may possess and bear offensive weapons by express permission of the Department for Control of Arms and Munitions (DECAM). No weapons registered as State property may be used by private citizens."

159. The Army Establishment Act states the following:

> Article 144. "Members of the Guatemalan Army shall have the right to possess and to bear offensive or martial weapons, provided they are authorized to do so for reasons of duty or service."
>
> Article 145. "Officers of the Guatemalan Army have the right to bear firearms and swords for their personal use, without the need for a licence."
>
> Article 146. "Other members of the Guatemalan Army may carry the weapons mentioned in the preceding article, in accordance with the conditions stipulated in the respective regulations."

160. In order to ensure the proper use of firearms by the security forces, the National Civil Police has held training courses on the "Basic Principles governing the use of Force and Firearms by Law Enforcement Officials" (Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, September 1989). The Ministry of the Interior, taking into account the document's main proposals concerning the use of firearms, regards their use as an extreme measure; accordingly, they may not be used except when a suspected criminal offers armed resistance or places the lives of others in clear danger, and cannot be controlled or stopped by other means. Every time a member of the armed forces fires a weapon, he must immediately inform the competent authorities.

161. At the time of this report's preparation, the Congress of the Republic was examining the draft of a new Arms and Munitions Act, proposed by the Executive and drafted by the Ministry of the Interior. The bill also incorporates recommendations made by the Committee on the Consequences of the Peace

Agreements. Before the Act can be approved, preparations have been made to transfer the Department for Control of Arms and Munitions (DECAM), currently part of the Ministry of National Defence, to the Ministry of the Interior under the new title of "State Office for the Control of Arms and Munitions." Moreover, in keeping with the new Act expert physicians, lawyers and psychologists have been recruited so that new applicants can be subjected to theoretical and practical testing and psychological assessment in order to determine their fitness to bear arms.

162. Most cases involving the use of force have concerned expulsions being carried out as the result of a judicial order, or incidents of public disorder. The conduct of the security forces has been observed by representatives of human rights bodies including the Office of the Human Rights Procurator, COPREDEH, MINUGUA, and the Public Prosecutor's Office. The training of security force members in the sensible use of firearms has made a fundamental contribution to their correct behaviour.

163. The National Civil Police continually mounts operations to decommission the many types of weapon carried illegally by individuals; 3,609 of these were seized in 1998.

164. An important legal measure relating to control over the bearing of arms is Congressional Decree 63-96, which sets 25 as the minimum age for applying for a licence to bear arms, and imposes requirements on doing so. Licences obtained prior to this Act by persons aged over 18 but less than 25 will not be renewed on expiry.

Disappearances

165. In June 1998 the State of Guatemala, through COPREDEH, submitted a document to the Working Group on Enforced or Involuntary Disappearances containing information relating to 41 cases, and on 10 May 1999 a further report on 26 cases. Each case was subjected to detailed follow-up and investigation lasting several months, despite the fact that very little in the way of references or information was available. In the end, every case was fully documented. The number of such cases investigated is still insignificant by comparison with the number reported - which stands at just under 3,000 - but the Government is determined to use its various agencies to follow up reports that are made.

Death penalty

166. The death penalty in Guatemala is covered by article 18 of the Constitution, which states: "Death penalty. The death penalty may not be imposed in the following cases: a) on the basis of presumption; b) on women; c) on persons over 60 years of age; d) on persons accused of political crimes or related ordinary crimes; and e) on accused persons whose extradition has been granted on this condition."

167. "All relevant legal remedies against the death sentence are admissible, including annulment. Annulment proceedings shall always be allowed. The sentence shall be carried out after all remedies have been exhausted. The Congress of the Republic may abolish the death sentence."

168. The death penalty is also provided for in the Criminal Code, whose article 43 states: "(Death penalty). The death penalty is of an extraordinary nature and may only be imposed in cases expressly determined in law; it may not be implemented until after all remedies have been exhausted.

169. The death penalty may not be imposed: 1) for political crimes; 2) when the conviction is based on presumption; 3) on women; 4) on males aged over 70; 5) on persons whose extradition has been granted on this condition.

170. In these cases and provided the death penalty has been commuted to loss of liberty, the maximum prison sentence shall be imposed."

171. It should be noted that Congressional Decree 14-95 of 16 March 1995 amended article 201 of the Criminal Code in respect of kidnapping or abduction. The article had previously stated:"The kidnapping or abduction of a person with the aim of obtaining a ransom, an exchange of third persons or for any other illicit purpose of the same or similar importance, shall be punishable by a penalty of between five and eight years'imprisonment. The death penalty shall be imposed on the perpetrator if the kidnapping or abduction causes the death of the abducted person."

172. Decree 14-95 amended article 201 to read: "Kidnapping or abduction. The death penalty shall apply to the physical perpetrators of the crime of kidnapping or abducting one or more persons for the purpose of obtaining a ransom, an exchange of persons or the taking of any decision contrary to the wish of the abducted person, or for any other similar or equal purpose. In this case no extenuating circumstance shall be granted. The death penalty shall apply to any accomplices, accessories after the fact, or others who have contributed to the kidnapping or abduction and have threatened to cause the death of the abducted person. Those on whom the death penalty has not been imposed for this crime shall not be granted remission of sentence for any reason."

173. In 1996 article 201 of the Criminal Code was again amended, by Congressional Decree 81-96, on the grounds that the 1995 amendment had not allowed for an alternative punishment to the death penalty to be imposed on the physical or intellectual perpetrators of the crime of abduction, a situation that could lead to confusion in applying criminal law to that type of case. Thus, article 201 now states: "Kidnapping or abduction. The physical or intellectual perpetrators of the crime of kidnapping or abducting one or more persons, for the purpose of obtaining a ransom, an exchange of persons or the taking of any decision contrary to the wish of the abducted person, or for any similar or equal purpose, shall be liable to the death penalty; if the death penalty cannot be imposed, a term of between twenty-five and fifty years' imprisonment shall apply. In such a case, no extenuating circumstance shall be granted. Accomplices or accessories after the fact shall be liable to a penalty of between twenty and forty years' imprisonment. Those condemned to prison for the crime of kidnapping or abduction shall not be granted remission of sentence for any reason."

Crimes punishable by the death penalty

174. Guatemalan criminal law provides for the death penalty in the following cases (Articles of the Criminal Code):

Article 131. Parricide: When the perpetrator is found to have acted with particular brutality.

Article 132. Murder: When the perpetrator is found to have acted with particular brutality.

Article 132 (a). Extrajudicial execution: When the victim is a minor aged under twelve or a person aged over sixty, or when the circumstances of the act or incident, the manner of execution and the evidence reveal that the perpetrator acted with particular brutality.

Article 175. Qualified rape: When the victim is aged under twelve years.

Article 201 (b). Forced disappearance: When the victim has suffered very serious physical injuries, permanent mental or psychological injury, or has died.

Article 383. Death of the President or Vice-President of the Republic: When the person responsible is found to have acted with particular brutality.

Article 201. Abduction.

175. The courts with jurisdiction to impose the death penalty are called the Courts of Criminal Sentence.

Examples of cases in which the death penalty was not implemented

176. In 1997 the Ninth Chamber of the Appeals Court of Antigua Guatemala, in Sacatepequez department, decided, on the basis of the limits imposed on the State of Guatemala by article 4 of the American Convention on Human Rights, to commute the death sentence to a penalty of fifty years' imprisonment in respect of Carlos Enrique Tortola Escobar, Cesar Augusto Soto Rivera and Marco Antonio Fuentes Marroquin, all guilty of the crime of kidnapping or abduction.

177. Likewise, and on the same grounds, the Court of Criminal Sentence, Drug-related Activities and Crimes against the Environment in Cuilapa, in the department of Santa Rosa, decided to commute the death sentence imposed on Guillermo Lopez Contreras, guilty of the crime of abduction, by subjecting him to fifty years of non-commutable imprisonment. In both cases, the judges' decision cited violation of the rights and guarantees established by the Political Constitution of the Republic and the American Convention on Human Rights.

Death penalties implemented

178. From 1988 to 1998 three persons were executed, two of them in 1996 (Pedro Castillo Mendoza and Roberto Giron) after being found guilty of the rape and murder of a four year old girl. The most recent case, in February 1998, was that of Manuel Martinez Coronado, who was punished for the murders of seven people. This was the first execution by lethal injection. From then until August 1999, the number of persons condemned to death by the courts was 12, ten of whom had committed kidnapping or abduction and two murder.

Judicial procedure applicable to a crime punishable by death

1. Preparation of criminal proceedings:

- Originating process (information or complaint);
- Pre-trial process (examination);
- Investigation;
- Dismissal;
- Production of evidence;

- Initiating order;
- Conclusions;
- Committal order (if on investigation it is decided to try the suspect, and the Public Prosecutor's Department is preferring charges);
- If appropriate, application for dismissal and closure of criminal proceedings.

2. Intermediate process:

- Indictment;
- Statement by defendant;
- Acceptance of plea;
- Commencement order.

3. Trial:

- Preparation of proceedings;
- Formal hearing;
- Application to produce evidence;
- Evidence called for by judge;
- Dismissal or stay of proceedings (as appropriate).

4. Proceedings:

- Commencement;
- Appearance of accused;
- Public hearing;
- Conduct proceedings;
- Incidental issues;
- Statements by the accused;
- Hearing of evidence (experts, witnesses, cross-examination, other evidence, new evidence);
- Summing-up;
- Sentence (deliberation, vote, passing of sentence, acquittal or conviction).

5. Objections:

- Remedies: application for reconsideration, appeal, special appeal proceedings, annulment, judicial review, clarification and additional explanation;

- Pardon by President of the Republic.

179. The procedure for implementing the death penalty has been changed to take account of humanitarian principles which, notwithstanding the penalty being imposed, are considered to be more suitable. Thus, the Congress of the Republic passed Decree 100-96 of 30 October 1996, "Act establishing the procedure for the death penalty", which was amended by Decree 22-98 of 6 April 1998. Article 7 of the latter states: "Following the reading out of the decisions to which the preceding article refers, the death penalty shall be implemented by means of lethal injection..."

180. Article 3 of the Act prescribes: "The death penalty shall be carried out in private, inside the relevant penitentiary. Only the following persons may attend: the executing judge, a forensic physician, any paramedical staff considered necessary, the prison governor, the public prosecutor, the prisoner's defence lawyer (if requested), the senior chaplain, a minister representing the prisoner's religion or belief, the prisoner's spouse or partner and their legal relatives, provided they are adults, and also representatives of the press, radio and television, who may not carry out live transmissions, nor any type of recordings for subsequent transmission, nor take any photographs, while the prisoner is either entering the execution chamber or inside it."

The death penalty and offenders who are minors

181. In Guatemala the death penalty cannot be imposed on minors (persons under eighteen years of age), who cannot be charged with an offence under the law. Article 20 of the Constitution states: "Minors. Minors who contravene the law may not be charged with an offence. Their treatment must aim to give them a full education appropriate to their age. Minors whose conduct violates criminal law shall be cared for in specialized institutions and by specialized personnel. They may not on any ground be confined in a gaol or place of detention intended for adults. This question shall be regulated by a special law." Article 23 of the Penal Code states: "Charges may not be brought against: 1) Minors..."

182. The new Children and Young Persons Code, due to come into force in March 2000 after an exhaustive process of study, discussion and analysis,[5] amends the procedures relating to the protection of minors who infringe the law. Under the new Code, minors who commit crimes having a social impact, such as murder, manslaughter and rape, shall be subjected to oral trial in order to determine their guilt or innocence of the act they are accused of committing. The procedure to be followed in bringing juvenile proceedings will be similar to that used for adults, with the new Code requiring the Public Prosecutor for Minors to carry out an investigation in 45 days, with the possibility of an extension, prior to adducing evidence and requesting oral proceedings.

183. During the hearing, both parties will present their evidence, and the minor may be questioned by the Public prosecutor. After considering all that has happened, the judge gives his verdict at the end of the hearing, although he may take a further three days to do so.

184. The Presidential Secretariat for Social Welfare is a State institution responsible for the "Care programme for young people who have contravened criminal law", the aim of which is to reintegrate into society young people between 12 and 18 who are in conflict with the law. The programme also carries out other tasks: rapid processing of cases referred by the courts; dealing with problems of

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[5] On 22 September 1998, Congress decided by 54 votes to 3 in favour of postponing for a third time the entry into force of the Children and Young Persons Code. The new date is 1 March 2000.

irregular social conduct; provision of job training opportunities; meeting nutritional needs; implementation of sports and recreational activities; maintenance of stable health conditions; provision of formal education; support for a stable home environment; and promotion of alternatives to confinement. The Presidential Secretariat for Social Welfare currently offers the following youth facilities: an assessment and diagnostic centre for women, the Gorriones ("Sparrows") assessment centre for men, the Gaviota ("Seagull") centre, and other centres called Stage I and Stage II. At all these centres, the two sexes are kept separate, and the young people are offered legal representation (court proceedings), psychological counselling, health, educational and recreational services, and vocational training.

Article 7

185. By Decree 58-95 of 10 August 1995, the Congress of the Republic amended the Criminal Code to include a new article 201(a) establishing torture as a crime and defining both the legal assumptions relating to its execution and the punishments to be applied.

186. Article 201(a) states: "The crime of torture shall apply to anyone who, by order of the State authorities, or with their authorization, help or acquiescence, intentionally inflicts on another person severe pain or suffering, whether physical or mental, for the purpose of obtaining information or a confession from that person or a third party relating to an act he may have committed, or who persecutes another person for the purpose of intimidating him or, through his action, other persons.

187. The crime of torture also applies to members of groups or gangs organized for the purposes of terrorism, insurgency, subversion, or any other criminal purpose.

188. The perpetrator(s) of the crime of torture may also be tried for the crime of abduction.

189. The consequences of acts carried out by a competent authority in the legitimate exercise of its duty and to protect public order do not constitute torture.

190. Those guilty of the crime of torture shall be liable to imprisonment lasting between 25 and 30 years."

191. The Committee against Torture, in its consideration of Guatemala's second periodic report on implementation of the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Punishment on 7 May 1998, welcomed Guatemala's promulgation of a written law on torture. However, it also proposed that the law be amended in line with the terms of the Convention. COPREDEH has drawn up an amended version to take account of that important recommendation. The draft will shortly be referred to the Congress of the Republic by the Presidency as an executive proposal for legislation.

192. The proposed text reads:

> "Article 201a (Torture). The crime of torture shall apply to anyone who inflicts physical or mental pain or suffering on another person for the purposes of a criminal investigation, or for the purpose of obtaining from that person or a third party information or a confession to punish him for an act he has committed or is suspected to have committed, or of intimidating or constraining that person or others as a preventive measure or punishment, or for any other purpose. Torture shall also be understood to mean the application of methods designed to obliterate the victim's personality or diminish his physical or mental capacity, even though they do not cause physical

pain or mental anguish, whether by order or with the authorization, help or acquiescence of the State authorities. A public official or person exercising public functions who, acting in that capacity, either commits torture directly or forces, orders, assists or induces a third party to commit torture while being in a position to prevent it is also guilty of the crime. Equally, the crime of torture applies to members of groups or gangs organized for the purposes of terrorism, insurrection or subversion, or any other criminal purpose. The perpetrator(s) of the crime of torture may also be tried for abduction. Pain or suffering resulting solely from legitimate punishments, or which is inherent or incidental to them or to acts carried out by a competent authority in the legitimate exercise of its duty and in order to protect public order, does not constitute torture. Those guilty of the crime of torture shall be liable to a punishment of five to fifteen years' imprisonment."

193. Moreover, article 85 of the Code of Criminal Procedure states: "Prohibited methods of obtaining statements. The accused may not be subjected to contestation, but simply advised to speak the truth. He shall not be subjected to any kind of coercion, threat or promise, but only to the precautionary measures expressly authorized by criminal or procedural law. No method may be used to force, induce or provoke him to make a statement against his will, and neither may charges or counterclaims be made with a view to obtaining his confession."

194. It should be added that article 155 of the Constitution states: "Responsibility for violation of the law. When, in the exercise of his duties, a State dignitary, official or worker violates the law to the detriment of an individual, the State or the State institution in which he serves shall be jointly liable for the damage and prejudice caused.

195. The civil liability of public officials and employees may be inferred as long as it has not been terminated by the Statute of Limitations, for which the period shall be 20 years.

196. In this case, criminal liability is extinguished at the end of twice the period specified by the Statute of Limitations relating to punishment.

197. Neither Guatemalans nor aliens may claim compensation from the State for damage or prejudice caused by armed movements or civil disturbances."

198. Concerning the nature of compensation for victims of the acts described in the preceding paragraph, articles 124 and 134 of the Code of Criminal Procedure provide for civil action and reparation proceedings (reparation of damages or prejudice), which may be brought in either the civil or criminal courts.

199. With respect to torture cases, the Office of the Human Rights Procurator does not keep statistics relating to the proceedings brought in 1998. However, its statistics on the cases resolved in 1998 show one case involving torture.

200. The statistics recorded by MINUGUA for the period 1 April to 31 December 1998 indicate the following in respect of torture; 5 complaints admitted, 2 confirmed violations, and 8 confirmations of violations reported in earlier periods. In respect of cruel, inhuman or degrading treatment, there were 6 complaints admitted, 4 confirmed violations and 2 confirmations of violations reported in earlier periods.

Laws relating to cruel or inhuman punishment

201. Among the laws in force prohibiting cruel or inhuman punishment are: The Political Constitution of the Republic of Guatemala (articles 3 and 19), the Act on Prevention, Punishment and Eradication of Violence within the Family, and the Criminal Code (article 201a). Another is the Children and Young Persons Code (articles 1, 11, 15 and 16), which is due to come into force in March 2000.

202. It should also be mentioned that the Convention against Torture and Other Cruel, Inhuman or Degrading Punishment, to which Guatemala has been a party since 1989, may be invoked in the domestic courts, since international human rights treaties take precedence over internal law, under article 46 of the Constitution.

Treatment of prisoners

203. Guatemala's prisons are the responsibility of the Prisons Directorate, which is attached to the Ministry of the Interior.

204. The system still suffers from a number of shortcomings. In 1996, the Guatemalan Institute for Comparative Research in the Criminal Sciences, a non-governmental organization, prepared a "Report on the prison system" for MINUGUA. In 1997, it completed another study called "The problems of preventive detention in Guatemala". Both documents indicate that the main problems affecting the prison system in Guatemala are its physical infrastructure and the administrative procedures relating to the treatment, separation and care of offenders.

205. The Guatemalan Government plans to spend 48 million quetzals (US$ 6,022,585) on the construction of 12 centres of confinement in 12 departments, at a cost of 4 million quetzals each (US$ 50,882). Plans for producing small prisons are well in hand, as is research into the introduction of maximum-security prisons, one of which has been operational in the Department of Escuintla since the second half of 1999.

206. The national authorities acknowledge the need for adoption of a new Prisons Act to bring about thorough structural changes. The Ministry of the Interior has formed a special committee, comprising two representatives from the Ministry of the Interior, two criminal judges, two public prosecutors, and one representative each from MINUGUA and the Prisons Directorate, which has drafted a law that will permit the complete reorganization of the existing system in line with actual requirements. The draft is currently being scrutinized by a steering committee of Congress prior to its submission as a bill to the plenary.

207. Work is also underway, with support from a MINUGUA project on improving the prison system, to establish the Prison System College, which is intended as a centre for the provision of effective and professional training that will take full account of human rights. It will also function as an information centre for institutions, organizations and persons involved in human rights. Its creation is a response to the need for prison staff recruitment and retraining, and to the training and information requirements of interest groups, including NGO's; it is also expected to benefit research and the diffusion of knowledge in subjects relating to criminology, prisons, the penal system and in other areas. On 10 June 1999 a core teaching group of 26 distinguished professionals from Guatemala was formed. The group is currently working to develop the College's methodological, curricular and legal framework.

208. Still on the subject of staff training, in July 1998 COPREDEH initiated talks with prison system officials with a view to devising a training programme for prison guards based on the United Nations international instruments relating to the treatment of prisoners, the Code of Conduct for Law Enforcement Officials, and other international human rights instruments.

209. In order to increase the understanding of public officials and the general public concerning the international standards relating to prisoners' rights, COPREDEH has published, with European Union assistance, a document entitled "Human Rights Instruments in the Administration of Justice." The document includes the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment; the principles of medical ethics applicable to the duties of health personnel, especially doctors, in protecting captured and detained persons from cruel, inhuman or degrading treatment; the set of principles for the protection of all persons subjected to any form of detention or imprisonment; the Standard Minimum Rules for the Treatment of Prisoners; the Basic Principles for the Treatment of Prisoners; the United Nations Standard Minimum Rules on Measures for Non-deprivation of Liberty (Tokyo Rules); the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules); the United Nations Rules for the Protection of Minors Deprived of their Liberty; the Code of Conduct for Law Enforcement Officials; the Basic Principles relating to Independence of the Judiciary; the Basic Principles on the Duties of Lawyers; and the Safeguards for ensuring the Protection of the Rights of Those Condemned to the Death Penalty.

210. Government Decision No. 975-84 of 14 November 1984 approved the Regulations Governing Detention Facilities in Guatemala. The regulations have three chapters: Chapter One stating general provisions, Chapter Two describing the functions of the authorities in each facility, and Chapter Three setting out the rules on treatment.

211. Chapter Three establishes the rules governing contact with prisoners. The main ones are given below:

> "Article 23. Inmates may receive visits by relatives, friends and other authorized persons. The director of the facility shall regulate its system of contacts with the outside.
>
> Article 24. Visits may be made only within the hours prescribed in these Regulations and in the places designated for that purpose, which may never be the dormitories or cells.
>
> Article 25. Visits are permitted on Wednesdays and Sundays every week, for four hours each day, in a form decided by the Prisons Directorate.
>
> Article 26. Exceptionally, visits may be granted outside the regulation days and times, if the centre's director decides this is warranted by special circumstances.
>
> Paragraph VI
>
> Article 27. On his arrival, every prisoner shall be allowed immediately to inform a lawyer of his choice and his family of his detention, and shall be granted reasonable facilities for communicating with and receiving visits from them, subject to the restrictions relating to the establishment's security, procedures and operation. During visits, both those under arrest and those on remand shall be supervised, but no employee or official from the police or the establishment may listen to their conversations.

Article 28. The correspondence of remand prisoners shall be delivered, following checks, except when, for reasons of security, the higher prison authorities decide that the addressee may not receive it. Telephone calls are only permitted in cases of urgent need, as decided by the director of the establishment.

Article 34. Every remand prisoner has the right to communicate to his family or to any other person he deems relevant the fact of his being transferred to another establishment.

Article 35. Detainees have the right to an interview with prison officials, to transmit peaceful and respectful complaints and petitions to outside authorities and/or to explain these in person to officials who may be visiting the establishment in an official capacity."

With regard to the treatment of remand prisoners, the Regulations state the following:

"Article 45. Any punishment that includes degrading treatment or unnecessary violence directed against prisoners is forbidden.

Article 46. No force may be used against inmates other than that needed to limit disobedience or resistance against an order made under the regulations. Guards must employ only the amount of force that is strictly necessary, and must inform the director of the establishment immediately."

212. These rules also apply to facilities where prisoners are serving sentence. In these establishments, many prisoners are permitted visits on days other than Wednesdays and Sundays, and for longer periods. A conjugal visit once a week is also permitted.

213. Both in preventive detention facilities and in those where prisoners are serving sentence, visits to inmates by lawyers are permitted around the clock.

214. Articles 42, 43, and 44 of the Regulations deal with infringements of the rules and the punishments to be applied. The full text of the Regulations is attached to this report.

215. On 16 March 1998 the Office for the Protection of Prisoners and Due Process was inaugurated within the framework of the Office of the Human Rights Procurator. The main role of the new institution is to deal with cases involving violations of prisoners'rights, at the request of either prisoners or their families, or in an unofficial capacity when the circumstances or seriousness of the case so warrant. Its main tasks are as follows:

- To protect the human rights of persons who are either subject to criminal proceedings or serving a current sentence in any of Guatemala's prisons, by means of investigation, or referral if appropriate, of complaints concerning human rights violations;

- To ensure, through supervision, promotional activity and reporting of complaints, that the responsible judicial and prison authorities comply with the provisions of the laws and regulations and of the legal instruments signed and ratified by Guatemala, with respect to prisoners' human rights;

- To maintain co-ordination with national and international institutions, public and private, that are involved or take an interest in protection, promotion, education and reporting in relation to prisoners' rights;

- To promote wider acceptance of, and compliance with, the rights that directly concern Guatemala's prison population;

- To take preventive and protective action concerning specific aspects of prisoners'situation in Guatemala;

- To implement activities designed to raise public awareness, with a view to gaining respect for prisoners' interests and rights and ensuring their successful reintegration into society;

- To establish active mediation methods for use when conflicts arise between the authorities and groups of prisoners, or at the request of such groups.

216. From 1 January to 20 September, the Office for the Protection of Prisoners and Due Process dealt with 20 complaints and gave a ruling on 15. In its decisions, the Office made recommendations to the prison and justice systems concerning improvements to prisoners' situation.

Article 8

Slavery and forced labour

217. Article 4 of the Constitution states: "In Guatemala all human beings are free and equal in dignity and in rights. Both men and women, whatever their civil status, have equal rights and responsibilities. No one may be subjected to servitude or any other condition which impairs his dignity. Human beings must act in a fraternal manner towards each other."

218. On the basis of the preceding paragraph, in Guatemala slavery and servitude are prohibited by Constitutional decree, and no case or complaint has been made known in this respect.

219. Moreover, with respect to forced labour, the Constitution states:

"Article 101. Right to work. Work is a right of the individual and a social obligation. The labour system in Guatemala must be organized in accordance with the principles of social justice."

"Article 102. Minimum social rights under labour legislation. The following are the minimum social rights forming the basis of labour legislation and action by tribunals and public authorities:

- The right to free choice of work and to satisfactory economic conditions which will guarantee a dignified existence for the worker and his family;
  There shall be equitable remuneration for all work, except as otherwise provided by law;

- Equal pay for all equal work performed under equal conditions, with equal efficiency and equal seniority;"

220. With respect to work done by persons serving a prison sentence, Guatemalan law contains no provision relating to forced labour by prisoners, since they are not obliged to work.

221. Article 37 of the Regulations on Centres of Detention in the Republic of Guatemala states: "Remand prisoners are not obliged to work, but may do so; they may be encouraged, to the extent feasible, through provision of the necessary means."

222. However, prisoners serving sentences may perform paid work of some kind, for which purpose they are helped to learn a trade.

Military service

223. The Constitution provides that military service is a both a duty and a civil right. However, before 1995 there had been occurrences of the use of irregular recruitment procedures. In 1995, by order of the President of the Republic, the army was told to suspend recruitment pending approval of a new law on military service, and that only persons who came forward voluntarily and expressed a desire to join the service must be accepted, provided they were deemed suitable under the law.

224. No cases have been recorded in which conscientious objection was presented as an argument for not carrying out military service.

225. In the framework of the Peace Agreements, specifically articles 43 and 44 of the Agreement on Strengthening of Civilian Power and Role of the Army in a Democratic Society, the following stipulations apply to military and social service:

> "It is reasonable to continue the practice of voluntary military recruitment while the Guatemalan Government, on the basis of the Comprehensive Agreement on Human Rights, proceeds to take the necessary administrative decisions and the Congress of the Republic to approve a Civilian Service Act, which will cover military and social service; the act shall concern compliance with a duty and constitutional right, which may not be forced or conducive to violation of human rights, and must be universal and non-discriminatory; the act shall reduce the length of service and present citizens with options."

On the basis of these general principles, the Government formulated the Civilian Service Act, which is now awaiting approval by Congress.

Application of the ILO Conventions

226. ILO Conventions 29 and 105 on forced and compulsory labour were ratified by Guatemala on 13 June 1989 and 9 December 1959 respectively. To date, the International Labour Organization has not included any recommendations concerning Guatemala in its reports on this matter. Nevertheless the Guatemalan Government, through the Ministry of Labour and Social Security and in accordance with article 22 of the ILO Constitution, has transmitted annual reports on the measures it has taken to give effect to the above-mentioned conventions.

Article 9

227. With respect to freedom and security of person, the Guatemalan Constitution states:

"Article 3. Right to life. The State guarantees and protects human life from the time of conception, as well as the integrity and security of the person.

Article 4. Freedom and equality. In Guatemala all human beings are free in dignity and in rights. Both men and women, whatever their civil status, have equal rights and responsibilities. No one may be subjected to servitude or any other condition which impairs his dignity. Human beings must act in a fraternal manner towards each other.

Article 5. Freedom of action. Everyone has the right to do whatever the law does not prohibit; no one shall be obliged to carry out orders which are not based on and issued in accordance with the law. No one may be persecuted or molested for his opinions or for acts which do not involve a breach of the law."

228. With respect to lawful arrest, following the reorganization of the National Civil Police Academy and the curriculum, the training of police officers now places emphasis on proper application of articles 6 (Lawful arrest); 7 (Notification of grounds for arrest); 8 (Rights of arrested persons); 9 (Interrogation of arrested persons and prisoners); 10 (Places of lawful detention); 11 (Detention for misdemeanours or breaches of regulations); and 12 (Right of defence) of the Constitution. These measures have been supported by COPREDEH, which in February 1998 presented the Director of the National Civil Police Academy with 25,000 pocket-sized cards containing information on rights, which are intended for persons arrested by police officers. The cards bear the text of the following articles of the Constitution: 7 (Notification of grounds for arrest); 8 (Rights of arrested persons); 13 (Grounds for ordering imprisonment); and 14 (Presumption of innocence and public nature of court proceedings), and also the text of article 36 of the Vienna Convention on Consular Relations, relating to the right of an arrested person of foreign nationality to communicate with the consular authorities of his country of origin.

Arrest

229. On this matter, the Guatemalan Constitution states:

"Article 6. Lawful arrest. No one may be arrested or imprisoned except for a crime or misdemeanour and by virtue of an order issued pursuant to the law by a competent judicial authority. The foregoing shall not apply, however, when a person is discovered in the act of committing a crime or misdemeanour. Persons arrested must be placed at the disposal of the competent judicial authority within a period of not more than six hours and may not be subordinated to ant other authority.

Any official or employee of the public authorities who infringes the provisions of this article shall be punished in accordance with the law and the courts shall automatically institute appropriate proceedings.

Article 7. Notification of grounds for arrest. Every person who is arrested shall be notified immediately, both orally and in writing, of the grounds for his arrest, the authority which

ordered the arrest and the place in which he is to be held. This notification must also be given by the most rapid means possible to such person as may be designated by the arrested person and the public authorities shall be responsible for making this notification effective.

Article 8. Rights of arrested persons. Every person arrested must be immediately informed of his rights in a manner understandable to him, and particularly of the fact that he may avail himself of a legal counsel, who may be present at all police and judicial proceedings. An arrested person shall not be obliged to make a statement, except before a competent judicial authority.

Article 9. Interrogation of arrested persons and prisoners. The judicial authorities alone are competent to interrogate arrested persons and prisoners. Their interrogation must take place within a period not exceeding 24 hours.
No other interrogation shall have probative value.

Article 10. Places of lawful detention. A person arrested by the public authorities may not be brought to a place of detention, arrest, or custody that is not lawfully and publicly intended for that purpose. Places of detention, arrest or provisional custody shall be separate from those in which sentences are to be served.

Any public authority or employee thereof violating the provisions of this article shall be held personally responsible."

Duration of arrest

230. In terms of provision aimed at limiting preventive detention as far as possible, the legislation in the Code of Criminal Procedure states the following:

"Article 261. Cases of exception. Preventive detention shall not be necessary in the case of minor crimes, except when there exists a reasonable presumption of escape or hindrance of the inquiry into the truth.

Preventive custody may not be ordered for crimes to which the penalty of deprivation of freedom does not apply or when, in a specific case, no such punishment is expected.

Article 262. Risk of escape. In deciding on the risk of escape, the following circumstances shall be given particular consideration:

- Strength of associations with the area, as determined by domicile, normal residence, location of family, business or work, and ability to leave the area permanently or remain hidden;
- The punishment expected to result from legal proceedings;
- The amount of damages to be repaid and the attitude adopted voluntarily in this regard by the accused person or suspect;
- The behaviour of the accused person or suspect during the proceedings or previous proceedings, to the extent that it indicates his willingness to undergo a criminal prosecution; and
- The previous conduct of a suspect.

Article 263. Risk of hindrance. In deciding on the risk that the investigation into the truth may be hindered, special consideration shall be given to whether there is serious suspicion that a suspect might:

- Destroy, alter, conceal, suppress or falsify evidence;
- Conspire to make co-suspects, witnesses or experts give false information or behave in an untrustworthy or misleading manner;
- Lead others to behave in such ways.

Article 264. Substitution. Provided the risk of escape or hindrance to investigation can be reasonably avoided by subjecting the suspect to other, less serious measures, the competent judge or court may officially impose one or several of the following:

1. House arrest, at the person's domicile or residence, or in the custody of another person, unsupervised or with such supervision as the court may decide.

2. The requirement to submit to the care or supervision of a specific person or institution, which shall report regularly to the court.

3. The obligation to appear regularly before the court or appointed authority.

4. Prohibition on leaving without permission the town or locality in which the person resides, or an area determined by the court.

5. Prohibition on attending certain meetings or visiting certain locations.

6. Prohibition on communicating with certain persons, provided this does not affect the right of defence.

7. Payment of an appropriate fine, either by the suspect or by another person, by means of a deposit of money or valuables, the leaving of a pledge or mortgage, the seizure or surrender of goods, or surety provided by one or more suitable persons.

The court may order such measures and reports as are necessary to ensure compliance. In no case shall such measures be used to distort the court's intention, and neither shall measures be imposed that are impossible to fulfil. In particular, the court must avoid imposing a fine if the suspect's poverty or lack of means prevents payment.

In special cases, all coercive measures may be discarded if a simple promise by the suspect to undergo trial is deemed sufficient to eliminate risk of escape or of hindrance to the investigation of the truth.

None of the substitution measures listed above may be granted in proceedings involving recidivists or habitual criminals, or the crimes of homicide, murder, parricide, aggravated rape, qualified rape, rape of a minor under twelve years of age, kidnapping or abduction in all their forms, sabotage, aggravated robbery and aggravated theft.

The substitution measures do not apply to crimes covered by Chapter VII of Congressional Decree 48-92, the Act on Drug-related Activities.

The granting of substitution measures must match the seriousness of the alleged crime. In the case of crimes against property, the application of the measures listed in subsection 7 of this article must be in proportion to the damage caused.

Article 264(a). House arrest for traffic offences. Where offences relating to traffic accidents are concerned, those responsible may remain at immediate liberty, under house arrest.

This measure may be applied through a formal document drawn up by a notary, a district judge or the chief of police dealing with the matter; these officials shall be held responsible for any unnecessary delay in granting the measure. The interested party may request the presence of counsel from the Public Prosecutor's Office in order to expedite the granting of this measure. The formal document must show the personal details of the beneficiary and of a guarantor, taken from either their identity cards or their driving licences, and their residential addresses must be recorded.

The competent judge of first instance, on receiving and examining the background information, shall determine the duration of the measure, and may order its substitution by any of those listed in the preceding article.

No one to whom any of the following situations applied at the time of the incident may benefit from this measure:

- In a state of inebriation or under the effects of drugs;
- Without a valid driving licence;
- Refusing to help the victim, despite being in a position to do so;
- Escaping and hiding to avoid prosecution.

A person who was driving a public passenger transport vehicle or school bus, or a general goods vehicle, may be granted this measure, provided he presents the relevant judge of first instance with sufficient guarantee of his ability to pay his public liability. The guarantee may take the form of a mortgage, surety provided by an organization authorized to operate in Guatemala, or money deposited with the Treasury Department of the Judiciary, and shall be determined by the judge in each case."

Legal remedies relating to detention

231. The Constitution states:

"Article 263. Right to habeas corpus. Any person illegally detained, imprisoned or prevented from enjoying his individual freedom, or threatened with the loss of that freedom or suffering vexatious treatment, even if he is imprisoned or detained in accordance with the law, has the right to apply for a writ of habeas corpus from the tribunals of justice, either to secure the restoration or safeguarding of his freedom or the cessation of the vexatious treatment or the termination of the coercion to which he has been subjected.

If the court orders the release of a person illegally imprisoned, the person shall be freed there and then. When so requested or when the judge or tribunal deems it appropriate, the writ of habeas corpus shall be executed in the place where the prisoner is detained, without previous notice or notification. Where a writ of habeas corpus is obtained in respect of any prisoner, the prisoner in question must be produced.

Article 264. Liabilities of offenders. Authorities ordering the concealment of the prisoner or refusing to produce him to the court or in any other manner disregarding this safeguard, as well as the officials carrying out their orders, shall be guilty of the crime of kidnapping and shall be punished in accordance with the law. If as a result of investigations, the person in respect of whom a writ of habeas corpus has been obtained is not found, the tribunal shall of its own motion immediately order an investigation of the case until the facts are fully determined."

232. Moreover, the Amparo Act prescribes:

Article 85. Authority to apply for habeas corpus. Habeas corpus may be applied for in writing, by telephone or orally, by the aggrieved party or by another person, without the need to appoint a representative and without formalities of any kind.

Article 86. Official cognizance. Any court of justice which learns, by any means, that a person is in the situation described in article 82 and is confined or simply being held, and that there is reason to fear that his whereabouts are uncertain, is required to institute and proceed with habeas corpus on its own initiative.

Article 87. Obligatory complaint. The governor, deputy governor or executive head of the establishment where a person has been detained, imprisoned or deprived of his freedom must, on learning of a complaint of habeas corpus, report it immediately to any tribunal capable of taking cognizance of the writ, or incur a fine of between 50 and 500 quetzals, without prejudice to further legal penalties.

Means of redress

233. With respect to the provision made in Guatemalan law for the victims of illegal detention or imprisonment, article 155 of the Constitution states:

"Responsibility for violation of the law. When in the exercise of his duties a State dignitary, official or worker violates the law to the detriment of an individual, the State or the State institution in which he serves shall be jointly liable for the damage and prejudice caused."

234. "The civil liability of public officials and employees may be claimed as long as it has not been terminated by the Statute of Limitations, for which the period shall be 20 years. In this case, criminal liability is extinguished at the end of twice the period specified by the Statute of Limitations relating to punishment."

235. "Neither Guatemalans nor aliens may claim compensation from the State for damage or prejudice caused by armed movements or civil disturbance."

Article 10

Persons deprived of liberty

236. The Constitution states:

"Article 19. The penitentiary system. The penitentiary system must aim at the social rehabilitation and reformation of prisoners and the following minimum rules must be observed in their treatment:

- Prisoners must be treated as human beings; they must not be discriminated against on any ground nor may they be subjected to cruel treatment, physical, moral or psychological torture, coercion or harassment, labour incompatible with their physical condition, or treatment impairing their dignity. Nor may they be subjected to extortion or scientific experiments;

- They must serve their sentences in places intended for this purpose. Penal institutions shall be civilian in character and staffed by specialized personnel;

- Prisoners shall have the right to communicate, at their request, with their relatives, a defence counsel, a chaplain or doctor and, where appropriate, with the diplomatic or consular representative of their country.

Failure to observe any of the rules laid down in this article shall give a prisoner the right to claim from the State compensation for any damage caused and the Supreme Court of Justice shall order his immediate protection.

The State shall create and foster conditions for full compliance with the provisions of this article."

237. Guatemala has different places of imprisonment for remand prisoners and those serving sentence. There are four centres for men serving sentence, and one for women. Those for men are Pavel Prison Farm, in the department of Guatemala; Cantel Prison Farm, in the department of Quetzaltenango; Canada Prison Farm, in the department of Escuintla; and the prison in the department of Puerto Barrios. The women's facility is the Women's Training Centre (COF). There are also 30 preventive detention facilities (for remand prisoners) distributed among Guatemala's 22 departments.

238. While in the majority of cases the separation of remand prisoners and those serving sentence is observed, some exceptions exist owing to problems of space and infrastructure. For example, although the Zone 18 Preventive Detention Facility in Guatemala City is intended for remand prisoners, it has a section for prisoners serving sentence. In the El Progreso, Coban, Mazatenango, Santa Elena Peten and Retalhuleu prisons, all intended for remand cases, there are prisoners serving sentence who are not separated from the rest. Puerto Barrios, a facility for prisoners serving sentence, contained 34 remand prisoners as at 20 September 1999 following the destruction of the departmental preventive detention facility by an earthquake earlier in the year.

239. Preventive detention facilities also contain persons serving a period of detention after being sentenced for misdemeanours. This detention consists of the deprivation of personal liberty for up to

sixty days. Article 46 of the Criminal Code provides that such detention periods must be spent in separate facilities from those intended for persons serving a prison sentence.

240. As at 20 September 1999, Guatemala's prisons contained overall 2,535 men serving sentence, 5,087 male remand prisoners and 318 men detained for misdemeanours. For women, the numbers were as follows: 161 serving sentence, 348 on remand, and 11 detained for misdemeanours.

241. The following table shows the situation at preventive detention facilities and at facilities for serving sentence. The figures referred to in the preceding paragraph are also given. The problem of overcrowding at some facilities is evident.

Inmate populations in facilities for serving sentence and in preventive detention facilities

Facility	Men			Women			Total population of facility	Capacity of facility
	Serving sentence	Remand	Detention for misdemeanours	Serving sentence	Remand	Detention for misdemeanours		
Granja Pavón	1,254	0	0	0	0	0	1,254	1,144-M
Granja Cantel	540	70	0	0	0	0	610	800-M
Granja Canadá	443	352	0	0	19	0	814	800-M
Cárcel de Escuintla	0	78	0	0	0	0	78	100-M
Preventivo Z, 18	88	1,468	164	0	0	0	1,720	1,000-M
Preventivo Fraijanes	0	1,021	0	0	0	0	1,021	1,440-M
C. Femenino C.O.F.	0	0	0	132	0	0	132	130-W
Santa Teresa	0	0	0	26	210	7	243	500-W
El Progreso	3	102	7	0	0	0	112	100
Antigua Guatemala	0	83	0	0	3	0	86	90
Chimaltenango	0	79	0	0	7	0	86	90
Mazatenango	9	121	38	0	9	1	178	200
Cobán	17	206	52	0	8	0	283	200
Zacapa	0	198	0	0	4	0	202	150-M
Puerto Barrios	161	34	0	2	9	0	206	250-M
Santa Elena Petén	12	138	37	0	10	0	197	150
Totonicapán	0	35	0	0	4	0	39	80-M 20-W
Sololá	0	82	0	0	1	0	83	30-M 06-W
Retalhuleu	8	44	20	1	3	3	79	66-M 30-W
San Marcos	0	92	0	0	12	0	104	150-M 30-W
Santa Cruz Quiché	0	98	0	0	0	0	98	60-M 40-W
Cuilapa	0	25	0	0	0	0	25	40-M 10-W
Salamá	0	65	0	0	0	0	65	30-M 00-W
Jalapa	0	74	0	0	17	0	91	50-M 20-W
Jutiapa	0	137	0	0	0	0	137	50-M 00-W
Chiquimula	0	94	0	0	3	0	97	25-M 10-W
Quetzaltenango	0	68	0	0	12	0	80	200-M 60-W
Coatepeque	0	130	0	0	7	0	137	30-M 20-W
Huehuetenango	0	152	0	0	10	0	162	100-M 07-W

Facility	Men			Women			Total population of facility	Capacity of facility
	Serving sentence	Remand	Detention for misdemeanours	Serving sentence	Remand	Detention for misdemeanours		
Nebaj	0	19	0	0	0	0	19	10-M 00-W
Sacapulas	0	5	0	0	0	0	5	10-M 00-W
Chichicastenango	0	6	0	0	0	0	6	10-M 00-W
Chajul	0	1	0	0	0	0	1	10-M 00-W
Cotzal	0	1	0	0	0	0	1	10-M 00-W
Tiquisate	0	9	0	0	0	0	9	15-M 00-W
Subtotals	2,535	5,087	318	161	348	11		
Total							8,460	

Source: Statistics of the Prisons Directorate

242. As previously indicated, one of the main problems confronting Guatemala's prison system is the absence of a law dealing specifically with its requirements. One step taken to try to address this situation was the publication of Ministerial Decision 268-98 of 31 August 1999 establishing the Committee for Transforming the Guatemalan Prison System. Its tasks include administrative reorganization, construction projects (a maximum security prison is planned), the introduction of advanced technological equipment and the provision of adequate weaponry for prison guards.

243. The Committee comprises ten professionals representing various institutions, including the Ministry of the Interior, national and private universities, the Judiciary, the Public Prosecutor's Department, and the Guatemalan Institute for Comparative Research in the Criminal Sciences.

244. In July 1998, MINUGUA launched a project called "Improving the prison system", which is designed to transform the entire system on the basis of a policy which respects the human dignity of those deprived of their liberty, legislative reforms and enhancement of the system's human resources.

245. In 1998 the following training was carried out within the framework of the project:

- Course of training for executive employees in the prison system;
- Course of training for security chiefs in the prison system.

The courses covered these themes: Ethics and human rights; History of corrective punishment; Prison legislation; National and international protection of human rights; Basic criminology; Prison essentials; and Basic prison security.

246. As a result of these courses, all the facilities for serving sentence and 3 preventive detention facilities (Santa Teresa, Zone 18 and Fraijanes) are in the charge of persons with full training in prisoners' rights.

247. Furthermore, in April 1999 a training course for 115 new prison guards was held, all of whom are now working in prisons. The training placed particular emphasis on respect for prisoners' human rights.

248. In the sphere of prison security, in the first quarter of 1999 alterations were made in order to create a maximum security unit inside the Canada Prison Farm, in the department of Escuintla to the south of Guatemala City. An area was rebuilt to house prisoners regarded as highly dangerous, of whom there are now around 100. The unit has been divided into four sectors so as to prevent any attempt at escape, but the conditions are also designed to allow inmates to serve their sentence in full respect for their dignity. The area is supervised by 100 prison guards. Each inmate has his own cell, and his movements are constantly monitored by a high-security closed-circuit video system.

249. There are now plans to build two more maximum security units in the grounds of Pavon Prison Farm at Fraijanes, 20 km from the capital city, enabling prisoners to be relocated. These measures also make provision for an area reserved for pre-trial detention. The sum of 15 million quetzals (US$ 1,925,545) has been set aside for this project, which will provide facilities for around 400 prisoners. The buildings will be designed so that, although there will be no great gains in terms of space, the prisoners do not suffer from overcrowding.

250. With regard to the reform and social reintegration of prisoners serving sentence, all the relevant facilities offer primary education; some of the teachers are appointed by the Ministry of Education and others by the Ministry of the Interior. On average, four hours of classes are provided each day. The Prison Farms at Pavon and Cantel offer secondary education. Literacy programmes are run by the National Literacy Committee (CONALFA); the Technical Training Institute (INTECAP) offers tailoring, dressmaking and hairdressing courses, retraining, and beauty therapy courses; the Family Welfare Association (APROFAM) runs courses on contraception and the prevention of sexually transmitted diseases. These three institutions present certificates to prisoners who complete their courses. In addition, the schools of psychology and social work in the University of San Carlos de Guatemala organize drama workshops, assess the inmates, and give courses on interpersonal relationships, emotional control, social coexistence, emotional sensitivity, mental health, sexuality and venereal disease.

251. The inmates of facilities for serving sentence may also engage in craftwork, farming and clothes production. Products are normally sold to the prisoners'visitors, although some prisons also sell them on the open market. The clothing is made by male and female prisoners under contract to private companies.

252. It should be pointed out that in all facilities for serving sentence and at most preventive detention facilities, inmates receive regular care from male and female medical staff. Dental care is available at the Canada and Pavon prison farms and the Women's Training Centre.

Under-age persons in conflict with the law

253. The following institutions are specially concerned with the speedy examination of charges made against minors:

- Juvenile courts, designed to expedite proceedings;

- The offices of the public prosecutors for juveniles, which contribute to proceedings on behalf of the Public Prosecutor's Office;

- The Procurator for Minors, attached to the Office of the National Procurator-General, which monitors cases of human rights violation involving under-age persons.

254. Under article 20 of the Constitution, minors (persons under 18 years of age) may not be charged with an offence, and minors whose conduct conflicts with criminal law must be cared for in specialized institutions and by specialized personnel. The Constitution also states that minors may not on any ground be confined in a gaol or place of detention intended for adults.

255. The Constitution provides that these matters shall be regulated by a special law, for which purpose the Juvenile Code was brought into force in 1979. It will be replaced by the Children and Young Persons Code, which is due to come into force in March 1999. The new Code is designed not only to meet the current needs of Guatemala's young people but also to comply with the provisions of the Convention on the Rights of the Child, to which Guatemala is a party.

256. In 1997 and 1998, the Commission on the Convention on the Rights of the Child (PRODEN) held lectures, seminars and training courses for judges, prosecutors, members of the National Civil Police and other government officials in order to instruct them in the application of the new Children and Young Persons Code, with particular regard to young offenders and minors in conflict with criminal law.

Article 11

257. With respect to this article, article 17 of the Constitution states:

> "No crime or penalty without prior law. No act or omission shall give rise to a penalty unless it constituted a punishable crime or misdemeanour under previously enacted legislation. There shall be no imprisonment for debt."

It is therefore illegal to deprive a person of his liberty because of failure to fulfil a contract.

Article 12

Freedom of movement

258. This right is protected by Article 26 of the Constitution, which states: "Freedom of movement. Everyone has the right to enter, stay in, pass through and leave the national territory and to change his domicile or residence, subject only to such restrictions as are imposed by law.

259. No Guatemalan may be expelled from or denied admission to the national territory or denied a passport or other identification documents.

260. Guatemalans may enter and leave Guatemala without being required to produce a visa. The penalties which may be incurred by anyone who contravenes this provision shall be specified by law."

261. As to migration by Guatemalan nationals and aliens, the Office of Migration supervises compliance with the provisions of the Migration Act and the corresponding regulations.

262. Section II of the Migration Act establishes two categories of migrant: a) Non-resident and b) Resident. The first category comprises persons in transit, tourists and visitors, and the second category is divided into temporary residents and permanent residents.

263. Migration control involves organizing and co-ordinating the services that check the documents of nationals and aliens entering and leaving Guatemalan territory, and examining the problems caused by these movements. Moreover, where aliens are concerned migration control also involves monitoring of their compliance with the laws relating to their stay and activities in Guatemala.

264. With regard to exit and re-entry, article 94 of the Migration Act states: "Any person attempting to leave national territory must do so at the places established for that purpose, carry appropriate documentation and submit to the respective migration controls.

265. Without prejudice to article 93 of this act, the migration authorities shall prevent from leaving the country any person not in possession of the required documentation or against whom a detention or restriction order has been issued by a competent tribunal.

266. Any official who permits a person to leave by failing to implement the provisions of this article shall be punished in accordance with article 419 of the Criminal Code."

267. Appeals made against the decisions of the Office of Migration are governed by the Administrative Disputes Act.

Issue of travel documents

268. The following must be submitted in order to obtain a passport: original and full photocopy of identity card, original and copy of birth certificate (except persons aged over 50), and proof of payment of the appropriate duties. In this regard, by the end of 1999 a new computerized system for issuing passports is due to be introduced which will process applications more quickly and check them more thoroughly. At present, between 600 and 700 passports are issued daily.

269. As part of the process of modernizing the Office of Migration, requests for passport extensions have been speeded up to the point where it is now possible to leave the required documents with officials in the morning and collect them the same afternoon.

270. In order to apply for a Guatemalan passport, it is necessary to be a Guatemalan citizen in full enjoyment of the rights of citizenship.

271. The following conditions are applicable to the withdrawal of passports: Expiry of documents; completion of official task or mission in the case of official passports; and/or alteration of documents.

272. Procedure for withdrawal:

- On the expiry of documents. The person concerned may be notified: on attempting to leave the country with a document that has expired, by a migration official or by the Guatemalan consulate, at any stage.

- On completion of an official task or mission. Passport issued solely for carrying out official tasks; only issued to officials on Government business.

- On an official's return from a mission abroad. The passport is collected by a migration official at the point of entry.

- Alteration of documents. If a document is found to have been altered, it is retained and the person carrying it becomes subject to such penalties as domestic law provides for this purpose.

273. It should be added that in accordance with article 73 of the Migration Act, aliens wishing to enter Guatemalan territory must present a valid travel document and an appropriate visa, with the exceptions provided for in the international treaties, agreements or conventions to which Guatemala is a party. The Ministry of External Relations may decide to revoke the visas of foreign nationals by simple exchange of official letters, except in the case of visas issued to temporary residents, permanent residents, and students.

274. The records of the Office of Migration indicate that the following numbers of requests for travel documents have been authorized in the past five years:

1994.....120,000
1995.....134,400
1996.....139,200
1997.....146,880
1998..... 8,850

Article 13

Migrants

275. At this point it should be noted that in November 1998, by Congressional Decree 95-98, a new Migration Act was approved. Its purpose is to unify and update the legal procedures relating to migration with a view to regulating all matters pertaining to Guatemalan nationals or aliens entering, staying in, or leaving Guatemalan territory, while permitting the right of freedom of movement to be exercised by all persons, subject to the restrictions that the law provides.

276. With respect to the procedures relating to offences committed by aliens entering national territory, the Migration Act states:

> Article 109. Aliens entering or staying in Guatemala without authorization from the Office of Migration, or without having fulfilled the requirements of the Act and its regulations, shall be liable to any of the following punishments:
>
> - A fine;
> - Deportation; and
> - Expulsion.
>
> Article 110. On discovering that an alien is entering or staying in the country without proper authorization, the Office of Migration shall launch an investigation designed to establish his identity, origin and nationality.
>
> Article 111. During such an investigation, the Office of Migration may house aliens not in possession of the legally required documents in centres specially designated for this purpose, which must provide an environment in which human dignity is cherished and respected.

To achieve these aims, the Office of Migration shall establish or authorize accommodation whose location, safety arrangements and functioning comply with the relevant regulations. If necessary, the Office of Migration shall request the assistance of non profit-making social institutions and organizations concerned with the care of migrants in transit on Guatemalan territory.

Article 112. Aliens who commit the following offences shall be deported to their country of origin:

- Entering or staying in Guatemala having evaded migration controls;
- Entering or staying in Guatemala with false documents;
- Re-entering the country without authorization, immediately after being expelled;
- Once such an offender, having been sentenced by the courts to imprisonment of at least two years, has completed sentence, the judge in the case shall place him at the immediate disposal of the Office of Migration.

If conditional suspension of sentence is granted, deportation shall become effective immediately the decision has been confirmed.

Article 113. Prior to the deportation of an alien for the offences listed in the preceding article, the Office of Migration shall:

- Convene a hearing of the interested party lasting no longer than 10 days;
- Receive evidence within 5 days of its being proposed;
- Resolve the situation within 72 hours of the end of the hearing or the receipt of evidence.

Evidence for the defence shall be allowed in accordance with the Civil and Commercial Code of Procedure.

Article 114. Aliens who commit the following offences shall be expelled to their country of origin:

- Failure to leave national territory within 60 days of the expiry date of a legal stay in Guatemala;
- Entering Guatemala in violation of this Act and regulations;
- Committal of any crime that violates domestic law while staying in Guatemala;

  The judge in the case shall place the person concerned at the disposal of the authorities of the Office of Migration.

- If the alien's stay is contrary to the national interest, as duly defined by the Office of Migration; and

- Such other instances as the Act may determine.

277. On 20 July 1999, by Government Decision 529-99, approval was granted to the Regulations to the Migration Act, which specify the procedures required for the Act's satisfactory application.

278. With respect to the law and practice relating to urgent expulsion of an alien from Guatemalan territory (grounds and conditions for implementation), the following information should be noted:

279. The Regulations to the Migration Act state (Article 97): "On expulsion. The expulsion procedure shall apply to any person who violates this Act and its regulations. To this end, the Subdirector for Migration Control of the Office of Migration shall prepare an expulsion order and request the National Civil Police to take the person into custody and convey him to the frontier, either to his point of entry or by a route considered appropriate for returning him to his country of origin. The identity of such a person shall be documented either by requesting his country's accredited diplomatic representative in Guatemala to identify him, or through a special exit pass granted by the Office of Migration on the basis of identification documents carried by him or statements he has made.

280. A false declaration made by an alien in obtaining a tourist or residence permit or a visa shall constitute grounds for expulsion.

281. If an alien's stay contravenes the national interest, public order or national security, he shall be expelled."

282. Article 98 of the Regulations states: "On deportation. The Office of Migration, through the Subdirectorate for Migration Control, shall deport persons in accordance with the law. They shall be notified accordingly, and have their passports stamped. If any person, on expiry of his stay, fails to leave the country or to lodge an appeal, he shall be expelled."

283. The procedures for determining the legality or non-legality of a person's entry or stay in Guatemala are as follows: Verification of passport validity (or entry document, in the case of Central Americans the CA-4); verification of visa; and verification of stamps of entry into Guatemala. Arranged interview (confirmation of the data contained in passport and the migration pattern it reveals).

Article 14

The Judiciary (Organization, functions and independence)

284. The Constitution of the Republic states:

> Article 203: "Independence of the Judicial Branch and the power to judge. Justice shall be dispensed in accordance with the Constitution and the laws of the Republic. It shall be the duty of the courts of law to give judgement and to see to the enforcement of their judgements. Other State organs are required to provide the courts with the assistance they require to enforce their decisions.
>
> Magistrates and judges are independent in the exercise of their functions and are solely subject to the Constitution of the Republic and its laws. Any person seeking to impair the independence of

the judiciary shall in addition to incurring the penalties laid down in the Penal Code be disqualified to hold any public office.

The jurisdictional function shall be exercised exclusively and without exception by the Supreme Court of Justice and by the other courts established by law. No other authority may intervene in the administration of justice."

Article 205: "Safeguards of the Judicial Branch. The following shall be established as safeguards of the Judicial Branch:

- Functional independence;
- Financial independence;
- Magistrates and judges of first instance may not be removed save in the cases established by law; and
- The selection of staff."

285. Judges' independence is currently one of the problems affecting the successful functioning of the Judiciary. The main obstacles identified in this regard concern the selection criteria for judges and magistrates, who in some cases have proved susceptible to pressure at the time of pronouncing sentence. According to a report produced in the framework of the Judiciary Modernization Plan 1997-2002 by the Committee for Modernization of the Judiciary, judges and magistrates with inadequate training and little career experience, and who are therefore not of high professional standing, state that they are coming under pressure from the communication media and various types of organization.

286. The first attempt to tackle this problem took the form of controls implemented by the General Courts Inspectorate. It failed, because at times it encroached on the courts' jurisdiction, thereby undermining the independence of the person giving judgement. In the light of that experience, the decision was taken to introduce effective training aimed at raising the professional standards of judges and magistrates. Accordingly, by Decision 13-98 of 27 May 1998, the Supreme Court of Justice brought into force the Regulations governing the College of Legal Studies. These regulations strengthen the College's role as the leading provider of legal training and instruction, both initial and advanced, and as the body responsible for ensuring competitive, objective and impartial selection of new entrants to the Judiciary, based only on the criteria of merit, ability, interest, participation and approval of resources.

287. As explained previously, a further initiative taken since 1996 to guarantee the independence and impartiality of the Judiciary was the approval of the Act establishing the Service for the Protection of Trial Witnesses and Persons involved in the Administration of Justice.

Right to a public hearing

288. Guatemalan law provides guarantees with respect to the right of any person to be heard in public by an impartial tribunal. These are contained in the Constitution, as follows: article 9 (Interrogation of arrested persons and prisoners); article 12 (right of defence); article 14 (Presumption of innocence and public nature of court proceedings); article 16 (Testimony against oneself or against relatives); article 28 (Right of petition) and article 29 (Free access to the courts and to agencies of the State), and in Articles 12 (Binding, cost-free and public nature of proceedings) and 356 (Public nature of proceedings) of the Code of Criminal Procedure. Specific laws regulate the admittance of the public to hearings, and

access by representatives of the domestic and international press and of the communication media in general.

289. The freedom to express opinions is protected by article 35 of the Constitution and regulated by the Expression of Opinion Act. Article 356 of the Code of Criminal Procedure states:

> "Public nature of proceedings. Proceedings shall be public, but the court may decide that they must be held behind closed doors, either fully or in part, if:
>
> - The modesty, way of life or physical integrity of any of the parties or of a person called to participate in proceedings might be damaged;
> - Public order or State security might be seriously impaired;
> - An official, personal, commercial or industrial secret is endangered, and its unwarranted disclosure might incur punishment;
> - A hearing behind closed doors is specifically provided for;
> - A minor is being examined, and the court considers that publicity would expose him to danger.
>
> The decision must be well-founded and made clear in the record of the proceedings. The court may require participants in such proceedings to treat in confidence any facts they have submitted or of which they are aware; such a ruling must be made clear in the record of the proceedings.
>
> Once the reason for closed proceedings no longer pertains, the public shall be readmitted."

290. The following specific laws govern public admittance to hearings, and access by representatives of the domestic and international press and of the communication media in general: Article 35 of the Constitution, which regulates the freedom to express opinions, and article 356 of the Code of Criminal Procedure, which establishes the public nature of proceedings.

Organization and functioning of lawyers associations

291. The College of Lawyers comprises all qualified graduates from the faculties of law of Guatemala's universities.

292. Its executive committee comprises a President, a Vice-president, a Secretary and committee members, and there is also an honorary committee comprising a President, a Secretary and members.

293. Article 90 of the Constitution states that it shall be compulsory for all university professionals to join their professional associations, for the purposes of moral, scientific, technical and material advancement of the university professions and control of their practice.

294. The rights to exercise freely the profession of lawyer and to attend freely to one's clients are guaranteed by article 196 of the Judiciary Act, which provides that no judicial, administrative or other activity may inhibit the exercise of the profession of lawyer, except as determined by law. Article 198 of

the same Act requires courts and judges to allow lawyers the freedom they require in order to uphold, either in writing or orally, their clients' rights. Moreover, article 92 of the Code of Criminal Procedure establishes the right to choose defending counsel.

295. With regard to free legal aid for accused persons lacking financial means, article 92 of the Code of Criminal Procedure states that if the accused does not select a defence lawyer, the court shall appoint one for him at the latest by the time of his first statement on the facts, in accordance with the rules on official defence.

296. Article 200 of the Judiciary Act provides that lawyers shall provide a free defence for persons declared poor or who fail to appoint a defence counsel. Judges must take care to ensure that responsibility for defence of the poor is divided evenly among the lawyers within their jurisdiction, and may impose a fine of between 5 and 25 quetzals on those who do not fulfil this duty for good reason.

297. In addition, article 2 of the code of professional ethics of the College of Lawyers and Notaries states that the profession of lawyer carries an obligation to provide a free defence for the poor, in accordance with the law, if such persons so request or it is a question of official defence.

298. In 1997 the Act on the Public Defender's Office was introduced by Congressional Decree 129-97. Article 1 of the Act establishes the Institute for Public Defence as the Office's executive body, and endows it with the functional and technical independence to carry out its task of providing free assistance to persons of limited financial means.

299. The Institute for Public Defence has received technical support from MINUGUA, and to date it has been granted 60 million quetzals to fund its operations.

300. Article 4 of the Act on the Public Defender's Office states: "Functioning of the public criminal defence service. The service shall have the powers to:

- Intervene in the representation of persons of limited financial means undergoing criminal trial in connection with any accusation that they may have committed a punishable act or participated in it, including in the presence of the authorities in a criminal prosecution;

- Assist any person of limited financial means who requests legal counsel because he considers that he might be accused in criminal proceedings;

- Intervene, through official defence counsels, when a person has not obtained or appointed a reliable defence counsel in accordance with the manner prescribed by law."

Article 15

Non-retroactivity of the law

301. Guatemalan law recognizes the principle of non-retroactivity of criminal laws. Article 15 of the Constitution states: "The law shall not have retroactive effect except in criminal matters when this is favourable to the accused."

302. Non-retroactivity is applicable in ordinary criminal law and in the military criminal codes, both in peacetime and in war.

303. When legislation is reformed during a trial or when, a new law having been applied, a person is left serving sentence in accordance with an older law that imposed more severe punishment, the offender in question may request review of trial through the appeal process in accordance with articles 453 and 464 of the Code of Criminal Procedure. The court may decide to impose a less severe sentence in accordance with article 15 of the Constitution.

Article 16

Legal personality and subject of rights

304. On this matter, article 1 of the Civil Code (Personality) states: "Legal personality begins with birth and ends with death. The unborn child is regarded as already born in respect of all eventualities from which he might gain, the exception being when the conditions of birth are not viable."

305. Moreover, article 8 of the Civil Code (Legal capacity) states: "The capacity to exercise civil rights is acquired on reaching adult age. Adults are persons who have reached 18 years of age. Minors who have reached fourteen years of age are not liable for any acts determined by law."

Article 17

Domicile

306. In accordance with article 32 of the Civil Code: "Domicile is established voluntarily through residence at a place with intention to remain in it." Article 36 states: "A person's legal domicile is the place the law determines as his residence for the exercise of his rights and the fulfilment of his obligations, even if he is not de facto present there."

Family

307. Article 47 of the Constitution entitled "On protection of the family" establishes: "The State guarantees the family's social, economic and legal protection. It shall advance the family's organization on the legal basis of matrimony, equality of rights of the spouses, responsible parenthood and the right to decide freely the number and frequency of their children."

308. Section II, Chapter I of the Civil Code regulates all matters pertaining to the family. Although not containing a specific definition of the word "family", it states that the latter may comprise all relations, by blood or affinity, in direct line either of ascendancy or descent, collateral or transversal.

309. The same Chapter asserts that it is the State's duty to guarantee the family's social, economic and legal protection. Likewise, the State must protect the physical, mental and moral health of minors and the elderly. It shall guarantee their right to food, health, education, safety and social security.

310. The characteristics of the Guatemalan family reflect the nation's heterogeneous nature, both in its socio-economic and vocational aspects and as regards its ethnicity and income distribution. The last

aspect in particular is revealing of how poverty affects the family's structure, organization and functioning.

311. Rural family life is spent in hamlets and villages, and on smallholdings or larger farming concerns. The first two are the family's natural places of residence, and the latter are where the head of the family or the whole family find work. The rural family's existence naturally centres around the activities on its own agricultural plot; in the case of the indigenous families this extends to handicrafts and small-scale trading as well.

312. The multicultural nature of Guatemalan society makes it difficult to define what is meant by a family, and by the same token it is very difficult to encapsulate the components that characterize the various groups in society. Such is the case with the "Maya family", which the Maya conceive as a unit within its village or community, but which also extends from maternal and paternal grandparents to mothers and fathers, maternal and paternal aunts and uncles, sons and daughters, and even cousins, nephews and nieces, with each member being assigned a role. One of the main aspects of the Maya family is religious belief, which brings order and meaning into community life.

313. In spite of Guatemala's multicultural and multiethnic richness and diversity the Government, through the Charitable Works Secretariat of the President's Wife (SOSEP), has taken measures such as establishing the National Co-ordinating Centre for the Family, which has 22 departmental family committees. The Centre represents a joint endeavour by all levels of authority - central, departmental and municipal-together with civil society, to educate, promote and restore Guatemalan family values. The aim is to start a nation-wide movement promoting the establishment and practice of family values. Messages of this nature have been broadcast in the various communication media. Also, a national day of the family is now celebrated, allowing Guatemalan families to take part in educational, cultural and recreational activities without discrimination.

314. A fund-raising effort is currently under way with a view to initiating "schools for heads of household" in 1999, in collaboration with the Ministry of Education. Moreover, courses on violence in the family are being provided for teachers and heads of household, who also receive guidance on prevention. In a number of departments, volunteers are being recruited to support SOSEP's programmes and activities nation-wide.

315. In 1998 the Presidential Secretariat for Charitable Works set up child and family care committees, known as "JUAN" committees, which are intended to help incorporate national policy on children, young people and the family into society. The committees operate on a voluntary basis and work effectively to promote and strengthen social self-management in the communities where the Presidential Secretariat for Charitable Works operates.

Right to private life and inviolability of domicile

316. Articles 23 and 24 of the Constitution establish "Inviolability of domicile" and "Inviolability of correspondence, documents and books". The jurisdictional organs alone are competent to authorize the interferences allowed in law. Prior request must be made by the Ministry of the Interior, whereupon a court issues the order in accordance with legal requirements. Anyone who feels that his rights have been violated may submit a complaint to the Ministry of the Interior, the National Civil Police or the Courts of Justice.

Article 18

Freedom of religion

317. The Constitution of the State of Guatemala protects the free exercise of all religions; everyone is granted the right to practise his religion or belief in public and in private, through teaching, worship and observance, subject to no restrictions other than respect for public order and for the hierarchy and adherents of other faiths.

318. Guatemala is a predominantly Catholic nation. The various denominations of the Evangelical Church account for the second highest number of parishioners. The Jewish and Muslim faiths are also practised, and Maya religious beliefs prevail in the indigenous communities.

319. With regard to indigenous religions, it should be pointed out that on 16 October 1998, as part of a package of constitutional reforms deriving from the Peace Accords, Congress amended article 66 of the Constitution relating to "Protection of ethnic groups", to read as follows: "Identity and religious beliefs of indigenous peoples. The State recognizes, respects and protects the right to identity of the Maya, Garifuna and Xinca peoples; their ways of life, social organization, customs and traditions; the wearing of indigenous costume by men and women and their various forms of religion, language and dialect, and the right to pass these on to their descendants. For the purposes of and in accordance with the final paragraph of article 2036 of the Constitution, the State recognizes the traditional authorities in indigenous communities as forces for national unity, territorial integrity and the indivisibility of the Guatemalan State. The State also recognizes, respects and protects these peoples' right to practise, preserve and develop their arts, sciences and techniques, and their right of access to sacred sites, according to the modalities established in law." Unfortunately, the population rejected the amendment in the referendum of 16 March 1999.

320. Also in the framework of the Peace Agreements, Guatemala's cultural diversity was formally recognized in the Agreement on Identity and Rights of Indigenous Peoples; recognition was granted to Maya religions as a component of their world-view, and also to their right to pass on their values. In the agreement, the Government assumed a commitment to respect the exercise of religion in all its manifestations, in particular the right to practise it in public and in private, through instruction, worship and observance. The agreement also recognizes the importance of respecting indigenous spiritual leaders, ceremonies and sacred sites.

321. In a section relating specifically to sacred sites, the above-mentioned agreement recognizes the existence of, and need to preserve, the alternative sacred sites where indigenous religious worship, especially Mayan, takes place. A joint committee comprising governmental and indigenous peoples' representatives and spiritual leaders has been formed in order to identify such sites and make arrangements for their preservation.

322. With respect to religion in the sphere of education, it should be mentioned that while religious education is not compulsory, there is also no legal impediment to its practice. Certain private study centres include teaching about the various beliefs in their regular syllabus.

323. In public education, since 1997 the Government, through SOSEP, has been implementing a project entitled "Free and triumphant", which offers young people an opportunity to develop moral and spiritual qualities that will help them to contribute in their own way to the fostering of the values and

principles needed in Guatemalan society. The project is inspired by the conviction that young people are less likely to become criminals if they are morally prepared.

Article 19

Freedom of expression

324. Freedom of expression is a right guaranteed by article 35 of the Constitution and by Decree 9 of the Constituent Assembly, the "Expression of Opinions Act", both of which state:

325. "Article 35: Freedom to express opinions. Opinions may be freely expressed and disseminated by any means, without censorship or prior authorization. This constitutional right may not be restricted by law or by any governmental decision. Anyone who, in exercising this right, fails to respect the privacy of others or morality shall be liable under the law. Anyone who considers himself offended shall have the right to publication of his statements in defence, clarification or correction.

326. Publications containing complaints, criticisms or allegations against public employees for acts committed in the performance of their duties shall not constitute crimes or misdemeanours.

327. Public officials and employees may require that a tribunal of honour, composed in the manner specified by law, declare that a publication affecting them is based on inaccuracies or that the charges made against them are unfounded. A decision which vindicates the person offended shall be published in the information media in which the allegation appeared.

328. Activities of the information media are in the public interest and such media may in no case be expropriated. Enterprises, workshops, equipment, machinery and other goods and chattels of information media may not be the subject of closure, embargo, take-over, confiscation or seizure, nor may their operation be interrupted, on grounds of commission of crimes or misdemeanours in the expression of opinion.

329. Access to sources of information shall be free and no authority may limit this right.

330. The approval, limitation or cancellation of concessions granted to persons by the State may not be used as a means of pressure or coercion to limit the exercise of free expression of opinion.

331. A jury shall try in private the crimes or misdemeanours referred to in this article.

332. The proprietors of the communications media shall provide insurance cover for their reporters by taking out life assurance."

Expression of Opinions Act

333. Decree 9, article 1. "Opinions may be freely expressed in any form, and in no case may any bond or security be demanded for the exercise of this right, nor may it be subjected to prior censorship."

334. With respect to the press, Guatemala has 8 daily newspapers offering national coverage, including Diario de Centroamerica, the official organ of the Government. Between 8 and 10 international dailies are also available, mainly in the capital and the main cities. A large number of weekly, fortnightly and

monthly publications offer coverage of political, social and economic matters. Many of these are published by well-known institutes and centres of research and analysis, and thus constitute important means of expression, information and criticism. Among the best known weekly publications are the magazines Critica, Cronica and Proceso.

335. The eighth report of MINUGUA contains no statistics on complaints relating to violation of this right, except for a single complaint received by the verification mission in March 1998. This concerned the magazine Cronica, which complained that the authorities were exerting pressure to limit the advertising it carried. The case was verified by MINUGUA, which also verified two cases in its ninth report covering the period 1 April-31 December 1998.

336. In 1997 the Government held an auction of radio frequencies, which has proved highly beneficial to the development of new radio stations.

Article 20

Prohibition of propaganda for war

337. National legislation makes the following provision:

> Criminal Code, article 285 (Rebellion). "The crime of rebellion applies to anyone who engages in an armed uprising for the purpose of promoting civil war or deposing the constitutional government, abolishing or changing the Constitution of the Republic, altering or suspending, in whole or part, the existing constitutional regime or preventing the integration, reorganization, free exercise or functioning of the organs of State.

338. The instigators, chiefs or leaders involved in the crime of rebellion shall incur a punishment of five to ten years' imprisonment and a fine of 500 to 5,000 quetzals.

339. Those who simply carry out the rebellion shall incur a punishment of one to four years' imprisonment. Anyone who, in consequence of an uprising, provokes other crimes, shall be subject to the provisions of this Code."

340. Article 386 (Proposal and conspiracy). "Proposal and conspiracy to commit the crime of rebellion shall be punishable by imprisonment lasting six months to two years and a fine of 200 to 2,000 quetzals."

341. Article 389 (Public incitement). "Anyone who, in public or by any broadcasting medium, formally and directly incites rebellion or sedition or gives instructions for these to be carried out shall incur punishment of imprisonment lasting six months to two years and a fine of 100 to 1,000 quetzals."

342. Likewise, the Expression of Opinions Act, Decree 9, states in Chapter III (Crimes and misdemeanours concerning the expression of opinion): "Article 27. No one may be persecuted or molested for his opinions; rather, anyone who is disrespectful to private life or morals, or commits the crimes and misdemeanours punishable under this Act, shall be liable in law.

343. Article 28. The following instances involving publication of abuses of the freedom to express opinions shall occasion trial by jury and punishment in accordance with this Act:

- Printed n atter implying treason;
- Printed matter considered under this Act to be seditious;
- Printed matter that offends morals;
- Printed matter disrespectful to private life; and
- Printed matter containing slander or grave insults.

344. Article 29. Printed matter implying treason is that which leads to committal of the crimes specified in subsections 8 and 20 of article 122 of the Criminal Code; these shall be punishable by 18 months' correctional imprisonment, commutable to the extent and in the form prescribed in the Criminal Code. In each case, account must be taken of intention and circumstances, so that the author is not punished for a simple opinion.

345. Article 30. Seditious printed matter is that which incites minds to use force in order to prevent the law's application or the free exercise of its functions by an authority, or the implementation of any judicial administrative decision. Criticism or censure of the law through advocation of its reform, or of the authorities or officials in the exercise of their functions, shall in no case be regarded as a misdemeanour or crime. Seditious written material shall incur a punishment of six months' detention as prescribed in the Criminal Code."

Article 21

Rights of assembly and freedom of expression

346. Article 33 of the Constitution states: "Right of assembly and demonstration. The right of peaceful assembly without arms is recognized.

347. The rights of assembly and of public demonstration may not be restricted, limited or curtailed and the law shall regulate these rights only for the purpose of guaranteeing public order.

348. Religious demonstrations outside churches are permitted and are governed by law.

349. It shall be sufficient, for the exercise of these rights, for the organizers to give prior notice to the competent authority."

350. It should be added that in July 1995, Congressional Decree 41-95 was issued in consideration of the need to protect private property and the rule of law: "No one participating in demonstrations held within the perimeter of cities, departmental capitals or towns may cover his face or hide his identity by any other manifest or deliberate means so as to commit acts or deeds classified as crimes or misdemeanours. The use of hoods, masks and other devices manifestly and deliberately intended to hide the identity of persons in public places, either as participants in a public demonstrations or in any other individual or collective activity, is prohibited. Such prohibition does not extend to artistic or cultural materials provided they are used exclusively for those purposes."

Article 22

Associations, trade unions and political parties

Trade unions

351. Twenty or more employees are required in order to form a workers' trade union, and five or more sponsors are needed in order to form an employers' union (article 216 of the Labour Code).

352. In order to obtain legal recognition, approval of their statutes and official registration, trade union organizations must comply with the procedure established in article 218 of the Labour Code, as amended by article 19 of Congressional Decree 64-92.

353. Under this procedure, the trade union organizations themselves must determine their membership requirements and regulate these in their statutes.

354. Public and private sector workers may exercise their right freely to form and join trade unions, the exceptions being members of the armed forces and the police (article 1 of Congressional Decree 35-96).

355. Structure: With regard to the constitution, organization and functioning of all trade union organizations, the legal provisions contained in Section six of the Labour Code must be observed.

356. With respect to the number of trade unions, statistics provided by the General Directorate for Labour of the Ministry of Labour and Social Security show that between 1981 and 1997 around 1,275 unions, federations and confederations were registered. Of these, 299 belonged to the public sector and 976 to the private sector.

357. Their combined membership was 91,514, of whom 2.3% were women.

358. Around 55 per cent of registered trade unions are in urban areas, with the remainder in rural areas.

Procedure to be followed in forming trade unions

359. The first part of the procedure for forming trade unions is to submit for Interior Ministry approval a request to which is attached the statutes or rules of the proposed association. After consideration, the Ministry of the Interior issues a decision recognizing the association as a legal entity. The association must then apply to the appropriate municipal register office to be entered in the register of legal persons, after which it obtains a registration certificate.

360. Such associations may be dissolved only if it can be proved that they are conducting activities against their regulations, and thus the law, or against public order, in which case proceedings are taken through the Ministry of the Interior.

361. The State imposes no limitation on associations or groups concerned with the promotion of human rights, provided they comply with the legal requirements.

362. With regard to observations made in the reports of the ILO Committee on Trade Union Freedoms, many of the cases submitted to that organization have been explained, documented and resolved.

363. It is important to note that the recommendations made in report no. 307 of the Committee on Trade Union Freedoms constitute documented recognition of the effort and political will the State of Guatemala has shown in attempting to clear up ten-year-old cases relating to violations of workers' human rights; those cases were reported to the ILO and have also been brought to the attention of the Commission for Historical Clarification.

Right to strike

364. The right of private sector workers to strike is recognized in article 104 of the Constitution and in Section Seven, Chapter One of the Labour Code. The right of public employees to strike is established by article 116 of the Constitution and by Congressional Decree 35-96.

365. The limitations on private sector workers' right to strike are determined by article 243 of the Labour Code.

366. In May 1996, the entry into force of Congressional Decree 35-96 amended the Act on Unionization and the Regularization of Strikes relating to Public Employees. This reform establishes the necessity, despite the right to strike enjoyed by employees of the State and its decentralized entities, of ensuring that such action does not entail the suspension of essential public services, and makes provision to that end. Essential services are taken to mean hospitals, health centres and first-aid posts, public sanitary and cleaning services, the telephone service, air traffic control, the Post Office, the administration of justice and associated institutions, urban and non-urban national and local public transport, supplies of water, electricity and fuel, and public safety services.

367. With a view to resolving disputes and avoiding unnecessary strikes by workers, the Government, through the Ministry of Labour and Social Security, consistently employs dialogue and negotiation in attempting to settle differences that arise between workers and employers; satisfactory results have been achieved in most cases. In this regard, mention should be made of Decision 001-97 issued by the Ministry of Labour and Social Security on 8 January 1997, which holds that disputes arising out of dealings between employers and workers constitute a threat to peaceful labour relations. The prevention of disputes and, if appropriate, mediation leading to their prompt and effective settlement, require the participation of the involved parties, so that they may be presented with impartial conciliation formulas designed to avoid or prevent further deterioration and any delay in reaching a fair and lasting solution. The above-mentioned Decision also sanctioned the introduction of bipartite and tripartite conciliation boards designed to offer advice and mediation aimed at extrajudicial resolution of disputes arising between workers and employers in assembly plants.

368. Likewise, Ministerial Decision 002-97 established the Office for the Prevention and Resolution of Labour Disputes, which is attached to the Ministry of Labour. This was done in the context of the Government's commitment under the Agreement on Socio-economic Aspects and Agrarian Situation, which charged the Ministry of Labour and Social Security with the task of promoting a culture of negotiation, in particular through the training of negotiators capable of settling disputes and devising measures acceptable to the parties involved; to that end, the Office for the Prevention and Resolution of

Labour Disputes has been set up in the Ministry and provided officially with the necessary staff, technical means and procedures.

Political parties

369. As mentioned in other parts of this report, the Electoral and Political Parties Act in force since 1986 describes in detail all the rights and obligations of political parties, as well as their organs, structure, powers. Article 51 of this Act contains provisions relating to the formation of committees for the establishment of political parties. The Act states that these committees may comprise any grouping of at least fifty citizens able to read and write and capable of organizing themselves to establish a political party in conformity with the law.

370. Once such a committee has been registered it is recognized as a legal entity concerned solely with the purpose for which it was set up. A committee may not become a political party, nor assume the rights of one (article 57).

371. During the most recent general elections for President and Vice-president held in 1995-96, the Supreme Electoral Tribunal registered 19 presidential candidates belonging to the same number of political parties. Likewise, twelve candidates belonging to various political parties and civil electoral committees were officially registered in connection with mayors' posts in Guatemala City.

372. In Guatemala there is no restriction on the formation of political parties. One of the peace agreements, namely the Agreement on Bases for the Reintegration of the National Revolutionary United Front in the Political Life of Guatemala, holds that the building of a democratic, multiethnic, multicultural and multilingual nation founded on social justice requires equitable participation by all its citizens, male and female, within a framework of full ideological and political pluralism. Accordingly, the Government confirms in the agreement that the transformation of the URNG into a duly accredited political party contributes to the strengthening of the rule of law and democratic pluralism. In this regard, it should be noted that on 2 August 1998 the URNG fulfilled the requirements regarding the forming of departmental committees, having held the necessary 15 meetings following its establishment as a political party. This may be regarded as a significant step towards implementing the Peace Agreements. The URNG party, as part of the New Nation Alliance (ANN) representing parties of the left, has announced its candidature for the general elections to be held in November 1999.

Article 23

Marriage

De facto union

373. Article 48 of the Constitution states: "The State recognizes de facto unions and the law shall make all necessary provision therefor."

374. Article 49 (Marriage) states: "Marriage may be authorized by magistrates, councillors, practising notaries and ministers of religion licensed for this purpose by the appropriate administrative authority."

375. Concerning the legal age for marriage, article 81 of the Civil Code (Entitlement to marry) provides: "Reaching the age of majority confers full entitlement to marry. However, a boy aged at least

sixteen and a girl aged at least fourteen may marry, provided they obtain consent in accordance with the following articles."

376. Article 82. "Consent must be granted jointly by the mother and father, or by the person who has sole parental authority. The father or mother shall give consent in the case of an adopted minor. If there are no parents, the guardian shall give consent."

377. Article 94. "Minors who ask to marry must appear in court accompanied by their parents or guardians or submit written consent given by them, either in the original or in legally approved form as appropriate; birth certificates must be produced, and if that is not possible, a certificate containing a statement of age signed by a judge must be supplied."

378. Article 153. "Marriage is altered by separation and dissolved by divorce."

379. Article 54 (Separation and divorce). "Separation, like divorce, may be declared: 1) By mutual consent of the partners and 2) At the wish of one of them for a specific reason. Application for separation or divorce by mutual consent of the partners may not be made within one year of the date of the marriage."

380. Article 162 (Protection of the wife and children). "From the time of submission of the application for separation or divorce, the wife and children remain under the protection of the authorities with respect to the safety of their persons and possessions, and such urgent measures as may be necessary shall be taken. The children shall remain in the provisional care of one of the partners, as designated by the judge, pending a final solution, unless there are serious grounds for committing them to the care of a temporary guardian."

381. Article 166 (Persons to whom the children may be entrusted). "The parents shall agree on a person to whom their children may be entrusted; however, the judge, citing just cause, may decide otherwise in the best interests of the children. The judge may also decide, after considering relevant studies or reports, to place minors in the custody and care of social workers or organizations specialized in the protection of minors. In every case, the judge must ensure that the parents can communicate freely with their children."

382. With regard to legal impediments to marriage, article 88 of the Civil Code states: "The following are prevented absolutely from marrying in law: 1) Blood relatives in direct or collateral line of descent, brothers and sisters and half-brothers and half-sisters; 2) Persons in line of ascent or descent who are linked by affinity; and 3) Married persons and those living in de facto union with a person other than their spouse pending legal dissolution of their marriage.

383. According to subsection 3, article 145 of the Civil Code, mental incapacity is a ground for requesting annulment. It states: "The marriage...of any person who was mentally incapacitated when the ceremony was performed may be annulled."

Article 24

Children's participation in war

384. Within the framework of civil and political rights, all Guatemalans have a duty to defend and serve their country (article 135 of the Constitution). However, article 68 of the Army Establishment Act rules that Guatemalan males who have reached the age of majority (18 years) have a duty to serve in the Guatemalan Army for the period determined by the laws and regulations when required to do so. The same Act requires that the available reserve of mobilizable land forces shall comprise only citizens aged from 18 to 55 years. This provides legal confirmation that minors cannot be involved in armed conflicts, even if they attempt to volunteer.

385. In September 1997, at the request of the United Nations Committee on the Rights of the Child, the State of Guatemala, through its permanent mission to the Office of the United Nations in Geneva, declared itself in favour of the draft optional protocol to the Convention on the Rights of the Child concerning children's participation in armed conflicts. Among the main considerations was the need to adopt the Protocol in order to prevent children participating in armed conflicts, which is inhuman from any viewpoint. The Government of Guatemala considered its position from the standpoint of having experienced 36 years of armed internal conflict in which minors had been involved in the fighting, for one party or another. At the Latin American and Caribbean Conference on the Use of Children as Soldiers, held in Montevideo, Uruguay in 1999, Guatemala supported the aforementioned draft protocol.

Age of majority and working age

386. According to article 31 of the Labour Code, "Minors of either sex aged fourteen and over, and those who are bankrupt or insolvent, are also competent to be hired for work, to earn and dispose of an agreed salary, and, in general, to exercise the rights and activities that derive from this Code, its regulations and the social security laws." In the case of minors aged under fourteen, contracts may be signed with their legal representatives and authorized by the General Labour Inspectorate.

387. Official records show that 756,711 boys and girls aged between 7 and 17 are included in the working population, representing 26 per cent of the total. This considerable proportion is explained by the fact that large sectors of the population live in such poverty that many families' existence depends crucially on the income provided by child labour, with a high percentage of boys and girls having to work both in the official and non-official sectors.

388. In order to protect the rights of child workers, the Ministry of Labour established the Unit for the Protection of Minors at Work by Ministerial Decision 4-92 of 8 May 1992; its brief is to ensure compliance with the laws protecting child workers. The unit promotes programmes designed to educate working children about their rights. It also issues attendance certificates to young people aged from 14 to 17 years, and visits employers and businesses in and outside the capital to observe the conditions in which minors work.

Protection for the family and for minors

389. For over fifty years Guatemala has had an institution called the Social Welfare Secretariat, which works on behalf of vulnerable children and young people. In January 1998 new regulations governing this Secretariat were issued. Its 33 centres offer young women training in clothes production, beauty

treatment, pastrymaking, cookery and typing. These centres are also equipped with day nurseries where qualified staff care for children whose parents have very limited means and cannot find anyone to look after them while they are at work. There are also 3 temporary shelters for orphans, 3 centres for the disabled and 6 detention centres for young people in conflict with criminal law. Through its many projects the Secretariat promotes, administers and supervises the implementation of policies, strategies, norms and programmes applicable to young people, especially those at risk; without discrimination, it fosters unity, stability, solidarity and commitment within the family and other social groups, with the aim of training useful citizens. The prevention measures carried out by the Secretariat should also be mentioned. These comprise actions taken through the medium of formal primary education for the purpose of protecting the basic rights of boys, girls, mothers and families and providing children with guidance for life and opportunities to develop through work. The following institutions also carry out large-scale activities for the benefit of children:

The Charitable Works Secretariat of the President's Wife

390. Established in 1991, this Secretariat facilitates social care programmes which are co-ordinated and supervised by the wife of the President. Its main targets are people whose lives are affected by extreme poverty and violence. The current programmes include community day-care centres and voluntary work.

Procurator for Minors attached to the Office of the National Procurator-General

391. In accordance with the Minors Code currently in force, the Procurator for Minors performs, inter alia, the following functions: assuring respect for the rights of minors; ensuring strict application of the Minors Code; representing minors who find themselves in an "irregular situation" and providing them with a legal defence; and prosecuting adults who have committed acts against the personal integrity of minors.

Children's Rights Defender attached to the Office of the Human Rights Procurator

392. By Decision SG-6-90 of December 1990, the Human Rights Procurator established the Office of the Children's Rights Defender as the department responsible for focussing attention on the problems confronting Guatemalan children and handling all complaints submitted to the authorities in relation to children's rights violations.

393. The activities of the Children's Rights Defender include collaboration with governmental and non-governmental organizations aimed at developing joint programmes intended to benefit children.

Presidential Commission for Human Rights (COPREDEH)

394. Since 1994, COPREDEH has co-ordinated a body called the Standing Co-ordination Committee for Children and Young People (COPANJ), which comprises representatives of the Public Prosecutor's Department, National Civil Police and the NGO "Casa Alianza". This body follows up individual cases involving violations of the human rights of street children, some of which are brought forward by Casa Alianza and others through official channels. COPREDEH has also published and distributed the national legislation and international instruments relating to child protection.

Article 25

Access to the exercise of public office

395. The exercise of the right to accede to public office is regulated by article 136 of the Constitution (Political duties and rights): "The rights and duties of Guatemalans, in addition to those laid down in other constitutional norms and laws of the Republic:

- To enrol themselves in the Register of Citizens;
- To elect and be elected;
- To guard the freedom and effectiveness of the ballot and the purity of the electoral process;
- To seek public office;
- To participate in political activities;
- To maintain due respect for the authorities; and
- To defend the principle of changeability and non-re-election in the exercise of the office of the President of the Republic."

396. It is important to add that the Constitution provides for certain disqualifications in relation to the foregoing. These are found in articles 186 and 187, which state the following:

397. Article 186. "Disqualification of candidates for the post of president or Vice-President of the Republic. The following may not be candidates for the office of President or Vice-President of the Republic:

The leader or chiefs of a coup d'état, armed revolution or similar movement disturbing the constitutional order or persons assuming the position of head of government as a result of such actions;

The person serving as President or Vice-President of the Republic when the election is held or the person who has served at any time during the presidential term in which elections are held;

Relatives to the fourth degree of consanguinity and the second degree of affinity of the President or Vice-President of the Republic, when the latter is serving as President and the relatives of persons referred to in the first subparagraph of this article;

Any person who has been minister of State at any time during the six months prior to the election;

Members of the army, unless they have been discharged or retired for at least five years before the date of the election;

Ministers of any religion or form of worship; and

Magistrates of the Supreme Electoral Tribunal."

398. Article 187. "Prohibition of re-election. A person who has at any time served as President of the Republic by popular election or a person who has served as President for more than two years as a

replacement for the person so elected may not be re-elected to the Presidency and may not again hold the office under any circumstances.

399. The re-election or prolongation of the presidential term of office by any means is punishable in accordance with the law. The supposed re-election or prolongation shall be null and void."

400. This right is also contained in the Electoral and Political Parties Act, Decree 1-85 of 7 December 1987. Article 3 states: "Rights and duties of citizens. Citizens have the following rights and duties:

- To respect and defend the Political Constitution of the Republic;
- To enrol themselves on the Register of Citizens;
- To elect by suffrage;
- To seek public office;
- To guard the freedom and effectiveness of the ballot and the purity of the election process;
- To defend the principle of changeability and non-re-election in the exercise of the office of President and Vice-president of the Republic;
- To perform the electoral functions to which they are appointed."

401. It should be noted that the Agreement on Constitutional Reforms and Electoral Regime, signed in the framework of the Peace Agreements, raises a number of highly important issues in this context. Conscious of the fact that elections constitute an essential tool in effecting Guatemala's transition to a functioning participatory democracy, and also of the need to increase popular participation in elections and to overcome abstentionism in order to strengthen the legitimacy of the authorities and consolidate pluralist representative democracy in Guatemala, the parties agreed on the following:

- To promote legal and institutional reforms designed to correct deficiencies and limitations in the electoral system and help bring about its improvement;
- To request the President of the Supreme Electoral Tribunal to establish and preside over an electoral reform commission charged with producing a report and recommendations on electoral reform and legislative amendments. The commission will tackle the following issues with a view to modernizing the electoral system: documentation, voter registration, voting, transparency and publicity, an information campaign, and institutional strengthening.

Legislation concerning the electoral system

402. On 14 January 1986 the Electoral and Political Parties Act came into force (National Constituent Assembly Decree 1/85), together with its two amendments in the form of Congressional Decrees 51-87 and 74-87.

403. The legal framework relating to electoral matters is completed by Decision 18-87 of the Supreme Electoral Tribunal, the Regulations to the Electoral and Political Parties Act. The Act has 265 articles, and the Regulations to the Act have 120.

404. Guatemalan electoral law treats as political organizations all political parties, civil electoral committees and associations with political objectives. Article 19 contains the requirements governing the existence and functioning of political parties.

405. For a political party to exist and function legally, it must have one member for every two thousand inhabitants, on the basis of the latest official census. Its members must be in full enjoyment of their political rights and be enrolled on the Register of Citizens, and at least half of them must be able to read and write. The party's origins must be publicly documented and it must comply with the requirements of ordinary law. It must also comply with the requirements to register the members of its permanent organs, ensure that the latter remain duly constituted and operational, and have them entered on the Register of Citizens.

406. The civil electoral committee is a temporary local political organization with power to nominate candidates for election to municipal councils. In the Metropolitan District (the capital city) a civil electoral committee must have 1,000 members able to read and write in order to achieve legal status. In departmental capitals the number required is 500, and in other towns 100. In all cases the committees must be literate, except in the ordinary towns, where the requirement is only 50 literate members out of 100.

407. Political parties may nominate candidates for the posts of President and Vice-President of the Republic and may submit candidates for election as National Congress deputies and as municipal mayors. Civil electoral committees may only submit candidates for the post of municipal mayor.

408. At the most recent general elections held in November 1995, in accordance with Decree 1-95 of the Supreme Electoral Tribunal the following public offices were contested:

409. President and Vice-President of the republic;

80 deputies to Congress;

20 deputies to the Central American Parliament;

2,186 municipal posts in 300 towns (mayors, aldermen and councillors).

410. During the elections the Supreme Electoral Tribunal registered 3,710,681 people as entitled to vote, of whom 2,200,548 were men and 1,510,133 women. Of these, 2,508,914 were literate and 1,201,767 illiterate.

411. An important feature of the elections of great significance for Guatemala was the change of approach adopted by the unions, popular movements and organizations concerned with the restoration of human rights, which played an active part in encouraging the population to exercise its right to vote. Their attitude was very positive, considering that in the past they had used various methods to promote abstentionism.

412. An item of information worth noting is that 400 indigenous candidates (Maya) figured in the general elections. Two appeared as candidates for the Vice-Presidency of the Republic, and all the others were seeking election as deputies or mayors. In addition, 22 of the 161 councils formed at the elections were predominantly indigenous. Finally, the Democratic Front for a New Guatemala, a left-leaning democratic organization with its roots in sections of organized civil society, had a majority of indigenous people among its members standing for public office.

413. Despite the important changes made to the electoral process and the fact that very little violence occurred during the most recent elections by contrast with the previous ones-which enabled the left to participate in the process-there still remains a certain tendency towards abstentionism in Guatemalan society. Out of a population of approximately 10 million, only half have the right to vote, and only 3.7 million have duly registered to do so. Out of that total, only 46 per cent, i.e. 1,737,033, actually voted, leaving a level of abstentions of 54 per cent.

414. The weakness of the Guatemalan political system relates partly to the poorly representative nature of its political parties, a result of the historical failure to meet popular expectations leading to apathy regarding the exercise of their right to vote.

415. In the face of these problems, one of the requirements that emerged from the Peace Agreements, particularly under the Agreement on Constitutional Reforms and Electoral Regime, was that legal and institutional measures must be implemented in order to improve the electoral system. Accordingly the two parties (Government and URNG), aware of the need to promote greater civic participation in elections and overcome abstentionism in order to strengthen the legitimacy of the authorities and consolidate pluralist democracy, are now endeavouring to implement the following measures:

To establish an electoral reform commission with the mandate to produce a report containing recommendations on electoral reform and corresponding legislative amendments. The commission will have responsibility for documentation, voter registration, voting, transparency and publicity, an information campaign and institutional strengthening;

To replace the current identity card by a single identity document which can also be used when voting in elections;

To improve the voter registration system. This includes defining electoral districts within municipalities and ensuring that each keeps its own electoral register for use when the need arises;

To improve public access to polling stations in rural areas. This will be done once discussions have been held with the political parties to determine the places in townships where polling stations may be located.

416. In view of the new functions assigned to the Guatemalan army in the context of the democratic and peaceful society that has resulted from the Peace Agreements, basically as a result of the Agreement on Strengthening of Civilian Power and Role of the Army in a Democratic Society, the electoral reform commission will also be responsible for investigating ways of ensuring that the system enables soldiers on active service to exercise their right to vote in future elections.

417. The commission will also mount public information campaigns to promote greater participation in elections, as a means of making the elected authorities more representative. The campaigns will also provide advice on forming civil committees and joining political parties.

418. In the framework of the Agreement on Bases for the Reintegration of the URNG, the two parties undertook a commitment to foster a climate of tolerance, openness and plurality capable of generating the conditions for conciliation and understanding. The agreement advocates the right of all URNG members to enjoy, on the same footing as all citizens, the full exercise of their basic rights and freedoms

(including organization, movement, residence, political participation, etc.), while also committing them to compliance with their duties and obligations.

419. The overall thrust of these reforms is to encourage participation and create greater opportunities for electors.

Referendum

420. Concerning another aspect of popular participation, on 16 March 1999 a referendum was held in order to ratify the constitutional reforms approved by the Legislature as part of the State's commitments assumed in the framework of the Peace Agreements. Only 18 per cent of those entitled to vote did so-an abstention rate of 82 per cent. In the light of the results, it was not possible to approve the proposed reforms, which are grouped together under four headings: Nation and social rights (indigenous issues); the Legislature; the Executive; and the Judiciary. Although the outcome meant that the reforms could not be realized, both the Supreme Electoral Tribunal and the national and international observers who monitored the process confirmed that the referendum was conducted in full transparency and that the factors affecting the result were completely unrelated to the voting process. It has to be acknowledged that there is still no culture of public commitment capable of improving matters this sphere, and that all the efforts made to date have failed to instil a greater civic conscience in the population.

Requirements for voter registration

421. The Regulations to the Electoral Act (Decision 181-87) state, in Article 1 of Chapter I (Rights and duties of citizens): "Enrolment. Any citizen in due possession of an identity card has the right to enrol on the register of electors of the municipality where he resides, for which purpose application may be made to sub-branches of the Registry of Citizens in municipalities that are not departmental capitals, to the branches in departmental capitals, or to the places of registration in the national capital. At any of these places, he may be enrolled on the electoral register of the municipality named as his place of residence on his identity card."

422. With respect to enrolment procedures, article 2 states: "Once the identity card has been presented and it has been established that the requesting person is Guatemalan and aged over 18 years, the enrolment officer shall complete the appropriate enrolment form, which shall contain the information given on the identity card in a format decided by the Supreme Electoral Tribunal. When the form has been completed, the applicant is handed a slip bearing a date on which he must return in order to be given the original version of his voting paper and, if applicable, his identity card. The voting paper shall indicate the voter's registration number and the name of the municipality where he may vote."

423. The Supreme Electoral Tribunal currently has 331 offices concerned with voter registration. During 1999 it set up a number of temporary voter registration centres in public places such as shopping centres. These stayed open seven days a week in order to facilitate access by the public and to encourage them to exercise their right to vote. The official statistics show the following enrolment pattern as at 30 June 1999:

Enrolments on the electoral register

Able to read and write

Men	Women	Total
1,725,295	1,163,661	2,888,956

Unable to read and write

Men	Women	Total
711,702	587,523	1,299,305

Distribution of electors by age (as at 30 June 1999)

Age group	Total
18-30	1,170,592
30-50	1,932,362
50-70	850,073
70+	235,234
Total	4,188,261

Source: Statistics of Supreme Electoral Tribunal.

424. By Decision 290-97 of 23 December 1997, the Supreme Electoral Tribunal established the Civil-Electoral Training, Dissemination and Education Unit (UCADE) as a means of encouraging greater public participation in politics. To that end, it implements permanent programmes intended to increase public awareness. Its activities have included a publicity campaign carried out prior to the 1998 municipal elections, during which posters were put up at strategic points throughout the country urging the population to exercise its right to vote. A significant feature of the campaign was the slogan "Together and equal, because our rights are the same", emphasizing women's freedom to exercise their rights on the basis of equality with men.

425. In 1998, the Guatemalan Indigenous Fund began implementing a civic training project worth 270,000 quetzals which is now 90 per cent complete.

426. In the same year a draft bill was put forward proposing amendments to the electoral laws, with a view to promoting greater public participation in elections. Its purpose is to enable Guatemalans living abroad to exercise their right to vote.

427. In addition, forums and meetings have been held at which themes such as women's and indigenous peoples' participation in politics have been thoroughly discussed. These activities include a conclave organized in August 1998 by members of the "Women's Civil Political Convergence" organization and the National Office for Women, with support from the Dutch and Swedish governments. During the conclave particular emphasis was placed on the importance of training in aspects of political participation as a means of eliminating the barriers that have held women back in this important sphere, despite the major contribution they make to society.

428. Finally, on World Indigenous Peoples Day (7 August) the Committee for the Decade of the Maya People held a forum attended by the general secretaries of five leading political parties in order to discover more about their programmes for addressing the existing needs of indigenous peoples.

Articles 26 and 27

Indigenous populations and racial discrimination

429. The signing of the Agreement on Firm and Lasting Peace between the Government and the URNG on 29 December 1996 constituted a major step towards tackling the challenges of development in an orderly, coherent and above all consensual manner. In this context, de facto discrimination is one of the hardest obstacles to overcome.

430. The main focus of current policy in this sphere is participation by and consultation with the indigenous peoples.

431. In this regard, the efforts made to end the political, economic and cultural exclusion and isolation of indigenous people have led to the abolition of laws in which discrimination was evident, particularly the de facto and subjective kind which is more subtle and can be found in many social and cultural situations. This is why it has been said that in Guatemala discrimination is worst when viewed from a cultural perspective.

432. The Agreement on Identity and Rights of Indigenous Peoples, signed on 31 March 1995 between the Government and the URNG, marks an important development in this situation. In the agreement the Government commits itself to tackling all aspects of the struggle against legal and de facto discrimination, and undertakes to recognize and respect the identity and the political, economic, social and cultural rights of the Maya, Garifuna and Xinca peoples.

433. The above-mentioned agreement provides for the establishment of joint committees, which are in fact mixed bodies made up of indigenous and non-indigenous representatives, responsible for devising programmes and advising on governmental policy in the areas of educational reform, land rights, and reform and participation; it also establishes ad hoc committees concerned with the granting of official status to indigenous languages and with sacred sites.

434. By June 1999 the committees on educational reform and official recognition of sacred sites had completed their final reports. Their recommendations are being studied by the Secretariat for Peace (SEPAZ), as the governmental body charged with monitoring and implementing the commitments assumed by the Government under the Peace Agreements.

435. Still on the subject of educational reform, a consultative committee on educational reform, comprising representatives of 17 governmental and non-governmental organizations and co-ordinated by the Ministry of Education, was established under the Agreement on Socio-economic Aspects and Agrarian Situation. During 1998 this committee succeeded in producing labour regulations that draw on the comments and recommendations made by the commission on educational reform.

436. Functions of joint committees:

- The committee on educational reform, established by Decision 262-97 of 14 April 1997, brings together government and indigenous peoples' representatives with the objective of facilitating access by indigenous people to official and non-official education through a strengthened system of grants and scholarships. Among other activities, this committee has reviewed all teaching material containing cultural and sexual stereotypes that

discriminate against the indigenous population. On 20 July 1998, the committee on educational reform delivered its final report to the consultative committee on educational reform with a view to the latter preparing measures based on proposals contained in the report. In general terms, the educational reform planned in the framework of the Agreement on Identity and Rights of Indigenous Peoples will play a vitally important role in the development of intercultural relations in Guatemala. The scope of the proposed reform transcends purely educational considerations and covers other areas such as decentralization, intercultural relations, culturally relevant educational programmes, relations in bilingual and multilingual contexts, equitable budgeting, the community as centre of authority, State representation through culturally relevant local administration, and regionalization based on areas of cultural and linguistic association. The proposals are intended to satisfy the following criteria: 1) Preparation of a legal instrument applicable to the whole nation; 2) Importance of addressing the characteristics and needs of a multiethnic, multicultural and multilingual nation; 3) Participation by all the villages, sectors, organizations and institutions that make up society; 4) Provision of assurance that everyone's right to high-quality, culturally and linguistically relevant education is realized.

- Government Decision 649-97 of 3 September 1997 established the committee on reform and participation, which comprises representatives from government and the indigenous peoples and is currently considering legal and institutional reforms designed to facilitate, regulate and guarantee such participation.

- The committee on the granting of official status to indigenous languages, established by Government Decision 308-97 of 10 April 1998, is formed of representatives drawn from linguistic communities and the Guatemalan Academy of Maya Languages. The commission is responsible for investigating possible modalities for the granting of official status to languages on the basis of linguistic criteria. It has published an opinion on article 143 of the Constitution relating to "Official language", and on 23 March 1998 it published a proposed "Modality for granting official status to the indigenous languages of Guatemala." This proposal envisages 5 official languages in addition to Spanish, and is being considered jointly by SEPAZ and the National Institute for Statistics with a view to the formulation of procedures for its implementation.

- The committee on sacred sites, established by Government Decision 261-97 of 4 April 1997, comprises governmental and indigenous peoples' representatives and spiritual leaders. Its task is to identify sacred sites and determine the requirements for their preservation. This committee was set up in recognition of the existence of alternative sacred sites where indigenous religious ceremonies, particularly Maya, have traditionally been held, and of the need to preserve them. In 1998 the committee requested SEPAZ to extend its mandate to enable completion of its final report.

- The committee on the land rights of indigenous peoples was established by Government Decision 515-97 of July 1997. Its current agenda covers seven main areas of activity: 1) acquisition of land for indigenous communities; 2) speedy resolution of conflicts; 3) land registration; 4) possession, regularization, use and administration; 5) restoration of communal land; 6) legal protection for the rights of indigenous communities; and 7) other relevant topics. One of the committee's first actions was to submit a draft Land Fund Act in July 1998 to the Committee on the Consequences of the Armed Conflict.

Other measures in the interests of the indigenous population

437. A report on challenges and human development in Guatemala, produced in 1998 under the auspices of the United Nations, states that the agreement on identity and rights of indigenous peoples "constitutes an important advance in the secular struggle of indigenous peoples and the starting point of a genuine process to restore Maya, Garifuna and Xinca rights. The agreement also contains commitments of a more general nature relating to matters such as racial and social discrimination."

438. A bill has been tabled which proposes that racial discrimination should be classified as a crime under the Criminal Code. The bill has already been the subject of a favourable opinion issued by the Congressional Committee on Legislation and Constitutional Matters. However, further consideration and discussion has been requested by the Congressional Committee on Indigenous Affairs.

439. Important work has been done by the Guatemalan Fund for Indigenous Development (FODIGUA), which exists to identify and respond to specific needs among the indigenous population nation-wide. Between 1996 and 1997, the Fund invested 32,527,789 quetzals in projects in the areas of agricultural development, communications, education, energy, industry and commerce, health, transport and housing. In 1998, approval was granted for 306 projects worth 29,534,128 quetzals, of which 112, representing an investment of 7,791,860 quetzals, have been completed.

440. Various projects have been implemented with a view to establishing equality between the indigenous and non-indigenous populations with respect to the right to education. They are described below.

441. From 1997 to 1998 the Ministry of Education National and International Aid Unit (UNICOME) negotiated economic assistance packages with the International Bank for Reconstruction and Development (IBRD), the European Union, Kreditanstalt fur Wiederaufbau (Germany), the International Development Association (IDA), and the Japan International Co-operation Agency (JICA), which have approved projects amounting to US$ 95 million for the next few years. Negotiations have also been completed with the Inter-American Development Bank (BID) and the Governments of Belgium and the Netherlands concerning educational projects worth US$ 30 million.

442. In 1997, a total of 754,779 textbooks on intercultural relations, mathematics texts or reading books were put into circulation, as well as 33,920 guides on teaching the 4 main Maya languages and a quantity of primers and manuals on writing skills for the pre-primary and primary levels. In the same year the Office of Bilingual Education distributed 16,000 bilingual handbooks and donated books to 42 libraries in the area of Totonicapan as well as 180 mini-libraries to 360 schools throughout the country.

443. The National Committee for the Teaching of Literacy has established a system of bilingual literacy teaching that responds effectively to the needs of the Maya-speaking population. This system is taught annually in 19 Maya languages. In 1998 the Committee began producing materials for use in intercultural bilingual education, including educational handbooks and cassettes in 16 Maya languages designed to strengthen the bilingual curriculum in line with the sociocultural and sociolinguistic characteristics of the learners. Other activities were the production of four prototype dictionaries in the Tz'utujil, Achi, Q'anjobal and Ixil languages, and the donation of 300 mini-libraries containing 11 books relating to aspects of teaching or to Maya culture.

444. In addition, the National Committee for the Teaching of Literacy distributed 9,500 textbooks and 32,100 handbooks on topics that included: Fundamentals of Maya culture for bilingual writing; A Maya teaching diary; Sexual equality and complementarity; Stories for bilingual teachers and facilitators.

445. Also in 1998, the Office of Bilingual Intercultural Education initiated its "B'e" Schools Programme, a pilot project which it is hoped will bring together alternative methods designed to enhance the educational quality and relevance of bilingual teaching initiatives. The approach is based on creative, reflective and dynamic participation, using Maya cultural models. The meaning of the term "B'e", which is understandable in nearly all Maya languages, covers the notions of destiny, travel, voyage and journey. The schools serve as instruments for perpetuating the valuable knowledge and skills of the Maya people, enabling indigenous people to use them for their personal and social development outside their everyday lives.

446. Forty-six of these schools were functioning as part of the programme in 1998. Operating at the pre-primary and primary levels, they involved 9,440 students and 373 teachers in 11 departments.

447. A significant step towards compliance with the Peace Agreements was taken with the establishment of the Office for the Defence of Indigenous Women, by means of Government Decision 225-99 of 19 July 1999.

448. The purpose of this Office is to provide legal advice and social services for indigenous women, whose situation renders them particularly vulnerable and open to discrimination. It has the following functions:

- To promote and develop activities with governmental bodies and NGO's from which can be developed proposals for governmental policies, plans and programmes designed to prevent, protect against and eradicate all forms of violence and discrimination towards indigenous women;

- To refer to the appropriate agency any complaints received from indigenous women, and to ensure that they are properly processed;

- To provide legal advice for indigenous women who fall victim to violence, maltreatment, discrimination, sexual harassment and other violations of their rights, and to follow up cases as they arise;

- To devise, co-ordinate and implement educational, training and dissemination programmes on the rights of indigenous women;

- To examine and submit to the President of the Republic, in co-ordination with COPREDEH, draft legislation on the rights of indigenous women, for which purpose the Office shall take into account all national legislation in addition to the international covenants, conventions and treaties ratified by Guatemala.

Indigenous population

449. The results of the tenth population census and the fifth housing census, carried out simultaneously on Guatemalan territory from 17 to 30 April 1994, revealed the following demographic profile, based

on ethnic group and gender: 3,476,684 indigenous persons comprising 1,729,240 men and 1,747,444 women; and 4,637,380 non-indigenous persons comprising 2,271,620 men and 2,365,760 women. The census recorded a population of 8,331,874.

450. Other statistical databases make use of sociocultural and anthropological criteria to define the population of Maya origin and that of non-Maya ["Ladino"] origin. One of these, the Secretariat-General of the National Council for Economic Planning (SEGEPLAN) consistently maintains that the relative proportions are 61 per cent for the Maya population and 39 per cent for the non-Maya population.

Indigenous participation

451. There is no law restricting the access and participation of the indigenous population when it comes to seeking public office. Despite the relatively inferior participation rate of the indigenous population by comparison with the non-indigenous majority, indigenous people occupy important posts in Congress and in other governmental agencies, mainly within departmental and municipal authorities. The myths surrounding civil-political participation by the Maya population have disappeared. This is fully exemplified by the results of the November 1995 general elections and the second round of elections in January 1996, which showed a substantial reduction in abstentionism in areas inhabited mainly by Maya, resulting in an improved balance between urban and rural power.

452. This active participation on the part of the indigenous population is mainly attributable to the unstinting efforts by its various organizations and by the civil committees in which it maintains a substantial presence. The above-mentioned electoral period saw around one hundred indigenous mayors elected in the municipalities, including Solloza and Quetzaltenango (second in national importance).

453. There are currently six indigenous deputies in Congress, representing three parties. Although this is still low in relation to the 80 deputies who form Congress, it indicates the strength of indigenous participation in recent years. Following the inauguration of the Office for the Defence of Indigenous Women, a scrupulous selection process led to the appointment of a Quiche woman as Defender.

454. As to another former area of discrimination against the indigenous population, it must be pointed out that important changes have taken place in relation to military recruitment. Particularly during the armed internal conflict, certain practices in this sphere led to discrimination against the indigenous population and violations of their human rights. Such practices and procedures were eradicated, beginning in 1995, by order of the President, who decreed that there should be no compulsory or discriminatory recruitment, and that the procedure must be voluntary pending a new law that would offer the option of community service. The order has been respected, even though the existing law permits anyone who so wishes to volunteer for military service, provided he fulfils the relevant legal requirements.